

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 09-10017-GAO
	)	
TAREK MEHANNA,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

DAY THIRTY  
JURY TRIAL

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thursday, December 8, 2011  
9:22 a.m.

Marcia G. Patrisso, RMR, CRR  
Cheryl Dahlstrom, RMR, CRR  
Official Court Reporters  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

## 1 APPEARANCES:

2 OFFICE OF THE UNITED STATES ATTORNEY  
3 By: Alope Chakravarty and Jeffrey Auerhahn,  
4 Assistant U.S. Attorneys  
5 John Joseph Moakley Federal Courthouse  
6 Suite 9200  
7 Boston, Massachusetts 02210

8 - and -  
9 UNITED STATES DEPARTMENT OF JUSTICE  
10 By: Jeffrey D. Groharing, Trial Attorney  
11 National Security Division  
12 950 Pennsylvania Avenue, NW  
13 Washington, D.C. 20530  
14 On Behalf of the Government

15 CARNEY & BASSIL  
16 By: J.W. Carney, Jr., Esq.  
17 Janice Bassil, Esq.  
18 John E. Oh, Esq.

19 20 Park Plaza  
20 Suite 1405  
21 Boston, Massachusetts 02216  
22 - and -

23 LAW OFFICE OF SEJAL H. PATEL, LLC  
24 By: Sejal H. Patel, Esq.  
25 101 Tremont Street  
Suite 800  
Boston, Massachusetts 02108  
On Behalf of the Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

DIRECT    CROSS    REDIRECT    RECROSS

WITNESSES FOR THE  
DEFENSE:

ANDREW F. MARCH, resumed

By Mr. Chakravarty (Cont'd)                      26

GREGORY JOHNSON

By Mr. Carney                      36

By Mr. Groharing                      85

1 (The following proceedings were held in open court  
2 before the Honorable George A. O'Toole, Jr., United States  
3 District Judge, United States District Court, District of  
4 Massachusetts, at the John J. Moakley United States Courthouse,  
5 One Courthouse Way, Boston, Massachusetts, on December 8, 2011.

6 The defendant, Tarek Mehanna, is present with counsel.  
7 Assistant U.S. Attorneys Aloke Chakravarty and Jeffrey Auerhahn  
8 are present, along with Jeffrey D. Groharing, Trial Attorney,  
9 U.S. Department of Justice, National Security Division.)

09:17 10 THE CLERK: All rise.

11 (The Court enters the courtroom at 9:22 a.m.)

12 THE CLERK: For a continuation of the Mehanna trial.  
13 Please be seated.

14 THE COURT: Good morning.

15 MR. CHAKRAVARTY: Good morning, your Honor. Thank you  
16 for seeing us before the first witness takes the stand.

17 I wanted to alert the Court to issues that the  
18 government thinks will require some argument. And while  
19 Dr. March is almost done as a witness, we're anticipating  
09:22 20 issues that will come up with the next couple of witnesses  
21 today. So there are three, kind of, categories of issues that  
22 I thought it made sense to alert the Court to.

23 The first involves experts generally in terms of  
24 discovery, scope of opinions. A related issue to that is  
25 scheduling for purposes of *Daubert* hearings, either evidentiary

1 or non-evidentiary, with regards to successive witnesses. I  
2 don't think that will apply to Mr. Johnsen and I don't --

3 THE COURT: I thought we talked about Mr. Johnsen.

4 MR. CHAKRAVARTY: We did.

5 THE COURT: Am I imagining that?

6 MR. CHAKRAVARTY: No. No, we did. We did. That's  
7 what I'm saying, for Mr. Johnsen it doesn't apply.

8 THE COURT: Right.

9 MR. CHAKRAVARTY: I'm alerting the Court because  
09:23 10 obviously your Honor wants to go ad seriatim. When it's ripe,  
11 then we'll deal with it.

12 THE COURT: Right.

13 MR. CHAKRAVARTY: Mr. Fadel -- Dr. Fadel is scheduled  
14 to be reached later today. And while his qualifications in  
15 terms of talking about Islamic law are not going to be  
16 challenged, the scope of what his proposed testimony is beyond  
17 that. So I guess it's a *Daubert*/scope issue that we should  
18 address before he, obviously, testifies. And redundancy and  
19 overlap with Dr. March's testimony.

09:23 20 So the question is: Do you want to hear that now or  
21 do you want to hear that at the break or some other time? We  
22 may be --

23 THE COURT: Well, I guess I'm not sure how substantial  
24 the objections are and how much time I'll need for it. I mean,  
25 I will -- I would think that the adjustments that have been

1 made already would continue to be made so that, for example,  
2 predictions or predictability issues, probability issues would  
3 not be part of what's offered. I think we have kind of fallen  
4 into the rule of no opinions about subjective assessment of the  
5 defendant. So if those are the nature of the objections, I  
6 think maybe they're already resolved.

7 MR. CHAKRAVARTY: The government understands those.  
8 The broader issue with Dr. Fadel is the defense, over the last,  
9 I think, two days, maybe three, has noticed some 70 exhibits,  
09:24 10 approximately, that they seek to introduce through the witness.

11 THE COURT: Right.

12 MR. CHAKRAVARTY: As was highlighted by Dr. March's  
13 testimony, these expert witnesses have been provided with a  
14 number of documents, apparently, that were produced in  
15 discovery. They've relied in part on those documents to  
16 formulate their opinions about what specific exhibits  
17 are -- what the meaning of the author is in those specific  
18 exhibits. That author happens to be the defendant.

19 The government has not been provided notice of what  
09:25 20 those exhibits are -- or what those materials have been that  
21 the witnesses have relied upon, and consequently when, for  
22 example in Dr. Fadel's case, 60 or 70 exhibits are then given  
23 to us to say we are going to introduce these through a witness  
24 who is presumably not competent to authenticate and do all the  
25 rest, the government recognizes that there is an asymmetry

1 there, and we're not going to belabor the issue by bringing in  
2 agents to authenticate these things.

3 But there's not an asymmetry with regards to expert  
4 disclosures with regards to Rule 16 and 703. And it's  
5 precisely for this reason. Because the defense is now -- has  
6 already used it for prejudicial effect with the government when  
7 their witnesses have reviewed materials, which the government  
8 is not aware of what those are; they've formulated an opinion  
9 about the meaning of specific exhibits, which it's then that  
09:26 10 very same expert is used to introduce for the first time those  
11 new exhibits. It's a different story if there's an exhibit  
12 already in evidence that the witness is testifying about  
13 because it's already in evidence, he's seeing it, it's  
14 something obviously we have used. That's a very different  
15 circumstance than introducing a brand-new exhibit and opining  
16 about the significance of that.

17 The expert disclosure is clear to say Dr. Fadel will  
18 discuss the meaning of government exhibits in which Mehanna  
19 talks about his religious beliefs. First, the government has  
09:26 20 problems with the witness describing the defendant's religious  
21 beliefs, understanding that's maybe a semantic issue between  
22 what is in the four corners of a government exhibit document.  
23 But what they've now proposed is hundreds, and I have three  
24 binders full of exhibits, many of which are a hundred  
25 pages -- one of which is an over-100-page-long Tibyan post

1 thread; another is, you know, some 50-odd pages long, some of  
2 which is duplicative of information that the jury already has.  
3 In addition to the overwhelming cumulative nature of it, this  
4 is why we wanted this stuff. This is why we asked, you know,  
5 with specificity the basis of their opinions.

6 This is not new information. Nothing has transpired  
7 during trial that would have prevented the defense from  
8 providing this information to us. And we've all been busy.  
9 We've all been actively engaged in this trial. It's not meant  
09:27 10 to besmirch counsel, but before a witness gets on the stand and  
11 says what is, I'm sure, very powerful testimony to suggest what  
12 the defendant's state of mind was about something in the  
13 relevant time period, arguably -- although much of what they  
14 have offered, the government would argue, is completely  
15 irrelevant and is, frankly, probably a strategic decision to  
16 put idle chatter or other irrelevant information to show that  
17 the defendant talked about things other than jihad, other than  
18 the al Qa'ida mission, which the government would argue is also  
19 inadmissible for other reasons, but not for the disclosure  
09:28 20 issues.

21 The disclosure issues frame the government's relevancy  
22 and hearsay objections, though. When the defense is trying to  
23 offer a defendant's statement, the government recognizes when  
24 it's not offered for the truth of the matter, as your Honor has  
25 done so far, if it's offered for a relevant state of mind



1 that's germane to the jury, we offer it for such. But unlike  
2 when the government offers that, there's no hearsay -- explicit  
3 hearsay exception for it, and it's for the defense to explain  
4 to proffer why each specific exhibit overcomes that barrier,  
5 that this is something germane to the jury's assessment of the  
6 relevant state of mind at a specific time related to the  
7 indictment.

8 The *Cianci* case, a First Circuit case, your Honor,  
9 *Buddy Cianci*, made clear that the Court's role in that is to be  
09:29 10 careful with it, and the government hasn't alleged that you've  
11 overstepped that. But there is a function there where the  
12 defendant's statement that's being offered, even if it's just  
13 for state of mind, has to be closely related to what the facts  
14 are that are at issue. So when we're talking about 70-some-odd  
15 exhibits, and I dare not guess how many are relevant versus not  
16 relevant -- a lot of what the government argues are irrelevant  
17 or 403 excludable -- they can't cross that threshold. And to  
18 the extent they can cross the threshold, the government argues  
19 that's precisely the type of information that should have been  
09:29 20 disclosed earlier.

21 I hasten to add that one of the reasons why  
22 Mr. Kohlmann and Mr. Vidino did reports was to specifically  
23 identify which chats they would be referring to, and then  
24 putting them in context of the opinions. The government, in  
25 some respects, suggests that that is required with regards

1 to introducing -- if they're going to be introducing a chat and  
2 explaining what the significance is with relation to a specific  
3 piece of evidence.

4 In this case, obviously, Dr. March, for whatever --  
5 you know, he created, he either did not produce to the defense  
6 or we haven't received anything from the defense, this is why  
7 there's 26.2 and there's other reciprocal discovery demands.  
8 Again, the government recognizes there's an asymmetry, but, you  
9 know, we've asserted our right to reciprocal discovery for a  
09:30 10 reason, and it's not just to be annoying or just because it's  
11 the rare case where we have a defense case.

12 Here there are a lot of exhibits and a lot of  
13 testimony which are at issue based on the fact of their  
14 disclosures and, frankly, the government thinks that they've  
15 just been delinquent.

16 One other issue on the -- on the --

17 THE COURT: And so what is your request?

18 MR. CHAKRAVARTY: So the request is to not permit  
19 Dr. Fadel from addressing new exhibits; to comment on what  
09:31 20 the -- what he believes is significant with relation to the  
21 author's -- the meaning of the author's writing with relation  
22 to Islamic law or Sharee'ah.

23 THE COURT: All right. Ms. Bassil?

24 MS. BASSIL: Yes, your Honor.

25 Your Honor, the government is fully aware of this:

1 Everything that Dr. Fadel may relate to was provided to us by  
2 the government, all right? They provided us -- it's  
3 essentially Tibyan posts, all right? They provided us with all  
4 of these posts. I'm not going to use 70 pages of thread. I  
5 only sent them the entire thread because, you know, it's the  
6 entire piece. Just like they've highlighted one or two lines  
7 from an instant message but included the entire instant  
8 message.

9 So what I would tell you is that the government has  
09:31 10 had this information, they've had it for years before we did,  
11 and it's not a surprise, all right? I am probably going to  
12 review with Dr. Fadel perhaps five or six of the Tibyan posts,  
13 and they are not -- what he is going to review them about is in  
14 terms of comparing them to al Qa'ida philosophy.

15 The government has made these sweeping  
16 generalizations, through Mr. Kohlmann, that al Qa'ida believes  
17 this, and this is exactly what it is, and then they've thrown  
18 up instant messages and Tibyan posts, and they're asking the  
19 jury to say the defendant is an aberrant because of this. It's  
09:32 20 far too broad. Dr. Fadel can testify to the specifics of what  
21 al Qa'ida's beliefs are based on Islamic religion and theology.  
22 Essentially, he will -- and he is not going over the issue of  
23 Aman, because Dr. March covered that, so I cut that out. But  
24 it will be specifically -- there are certain concepts that are  
25 part of Islamic religion law and theology that al Qa'ida has

1 taken, and essentially you can call it corrupted or perverted.  
2 He's going to review those and he's going to review writings in  
3 terms of the comparison to that.

4 He's not going to talk about the defendant's state of  
5 mind or profile or anything like that. What we're doing is  
6 exactly what the government did. There are no new materials  
7 here. We provided the government with -- in full, more than we  
8 needed to. And the other exhibits are essentially instant  
9 messages which I am probably not going to use. I gave them to  
09:33 10 the government as an abundance of caution, that Dr. Fadel may  
11 refer to there was an instant message on this topic. But I put  
12 them there just in case he referred to them. I may not even  
13 use them. And they're already in evidence. The government put  
14 them in. This is nothing new.

15 I also might add, you know, we would get lists of  
16 hundreds of exhibits, hundreds of these readers the night  
17 before. And as far as cumulative, do I really need to talk  
18 about cumulative in this trial? The government's evidence has  
19 been nothing but cumulative. If they said something once, they  
09:33 20 said it ten times. So there is really nothing cumulative about  
21 this.

22 I am not going to be repeating what Dr. March  
23 repeated. Now, certainly a couple of things are going to sound  
24 similar because he has to explain some things, but he is not  
25 going to be talking about the issue of Aman. That was

1 carefully reviewed by Dr. March.

2 And Dr. Fadel is fully qualified to do this. He's a  
3 professor of law. He's actually a lawyer. And he has  
4 extensive experience and study in, you know, theology and  
5 writings both in al Qa'ida as well as -- you know, from  
6 medieval scholars all the way up to the present.

7 So, your Honor, we have provided them with all of the  
8 discovery. It's nothing new to them. Nothing new at all.  
9 They obviously went through all the Tibyan posts in order to  
09:34 10 select the ones they wanted to put in. And, quite frankly,  
11 they selected ones that they thought supported their position,  
12 their Tibyan posts, that are inconsistent with al Qa'ida's  
13 views. And these are the ones we want to talk about. It is  
14 only a way of providing a contrast to the government's case as  
15 well as to what Mr. Kohlmann had to say.

16 We have specific experts on narrow issues here, and I  
17 don't think that there's any issue of lack of disclosure or  
18 Rule 16 or anything of that nature. We are not required to  
19 file a report; we are required to file a notice. We looked at  
09:35 20 notices given in federal courts all across this country, and  
21 our notices are by far way more extensive than any court has  
22 ever required. And I even revised them after Mr. Kohlmann in  
23 order to address those issues.

24 THE COURT: Well, I see it sort of as a separate  
25 issue, and that is, this is the defendant's case-in-chief. And

1 there was a time when the parties were to identify their  
2 prospective exhibits, and the defense filed a list of  
3 prospective exhibits.

4 MS. BASSIL: Yes.

5 THE COURT: Are these part of it?

6 MS. BASSIL: I have to ask --

7 THE COURT: The numbering would seem to indicate  
8 they're not.

9 MS. BASSIL: We all agreed, and the government knew.  
09:36 10 And government added exhibits.

11 THE COURT: That happens. And it becomes a question  
12 of degree, I think.

13 MS. BASSIL: Yes. But we couldn't identify exhibits  
14 necessarily ahead of time because we had to wait for what  
15 Mr. Kohlmann was going to say. All of our defense focused in  
16 response to Mr. Kohlmann.

17 THE COURT: I think the -- as I just said, I think  
18 it's a matter of degree. We do not rigidly enforce the  
19 pretrial exhibit disclosures necessarily, and parties are able  
09:36 20 to respond to events in the trial and to -- but it seems to me  
21 if there's a principal expert witness who's expected to  
22 testify, that at least some significant body of the exhibits he  
23 would refer to could be identified pretrial.

24 If it is the case that you're most interested in five  
25 Tibyan Publications posts, then maybe the government can focus

1 on that and see what disadvantage it seems to continue to bear  
2 under those circumstances.

3 MS. BASSIL: I will also say, your Honor --

4 THE COURT: So I think it may be -- we may be able to  
5 resolve this by limiting, and maybe consistent with what you  
6 have in mind to put in evidence, the volume so that we don't  
7 have a whole volume that has to be responded to.

8 MS. BASSIL: Can I say the government also received  
9 essentially -- let me give you a little background. The  
09:37 10 government actually received the posts we're going to use a  
11 while ago, but because of the disk the government provided to  
12 us -- and by the way, the program they told us to buy to open  
13 the disk was \$185 and it didn't work and it was the wrong  
14 program; we then were able to open it. But we couldn't -- it  
15 took a long time to get it into the same format, you know,  
16 where it shows the Tibyan header and so forth.

17 And so the government was given quite a while  
18 ago -- actually, I don't even know when. They were given --

19 When did we give them --

09:38 20 There were original exhibits, your Honor, which we  
21 gave to the government, we gave them notice, but it was based  
22 on the way we were able to open the CD. And it's the same  
23 material. Now, we were able, after a lot of effort, to get  
24 them into a more reasonable-looking format, but it's the same  
25 exact post.

1 THE COURT: Well, okay.

2 MR. CHAKRAVARTY: Just to clarify on that, I believe  
3 this weekend we received --

4 MS. BASSIL: They received them before.

5 MR. CHAKRAVARTY: -- 1179 to 1237.

6 THE COURT: Well, there's receiving and there's  
7 receiving. I don't want to prolong this too much because I  
8 would like you to see if you could narrow the scope and it  
9 might be resolvable.

09:38 10 MR. CHAKRAVARTY: That seems to make sense.

11 THE COURT: But there is disclosure and there's  
12 disclosure. There's bulk disclosure and then there's  
13 identification of witnesses -- exhibits to be used with  
14 particular witnesses in support of their testimony --

15 MS. BASSIL: We didn't get that, your Honor. We  
16 didn't get that.

17 THE COURT: -- in particular, experts, so --

18 MS. BASSIL: We got rafts -- I'm sorry.

19 THE COURT: -- somewhere in the middle.

09:39 20 We have a little time to resolve that. Let's see  
21 where that is.

22 MS. BASSIL: Your Honor, I can tell you that we would  
23 get rafts of disclosures and three exhibits would be used, all  
24 right? So as far as disclosure from the government, it didn't  
25 happen that way. And I apologize for interrupting you.



1           But I will say that. And I believe it was -- either  
2           it was at the very beginning of this trial or before the  
3           beginning of this trial we indicated to the government posts  
4           from Tibyan. And as I said, because we couldn't open the disk  
5           the way they did, we couldn't -- we couldn't sync them until  
6           very recently. It took 45 minutes to be able to print out each  
7           post in the format that the government already had.

8           THE COURT: Okay. At any rate, if the realistic issue  
9           relates to five Tibyan posts and segments thereof, then maybe  
09:39 10          that's not as much a disadvantage to the government.

11          MR. CHAKRAVARTY: I'd be happy to discuss that at the  
12          break.

13          THE COURT: So let's see if you can resolve that by  
14          negotiation.

15          MR. CHAKRAVARTY: If I could clarify just for record  
16          purposes, your Honor, and this is not meant to be tit for tat,  
17          but obviously the government had provided all of its exhibits  
18          before trial to the defense. To the extent we were identifying  
19          which exhibits were going to be referenced by a specific  
09:40 20          witness, we did produce that as soon before -- as early before  
21          the witness appeared as we could. And in that case we did do  
22          dribs and drabs. But to say we just didn't notice them with  
23          what those are I think is an overstatement.

24          But moving on, there is -- there are a couple of other  
25          expert witnesses for whom either a *Daubert* hearing --

1 full-blown evidentiary hearing we believe is necessary, and/or  
2 at least an argument on those witnesses. Obviously, they are  
3 not going to be reached today, but for scheduling purposes,  
4 understanding that today may be the last day that you had an  
5 afternoon open --

6 THE COURT: It's filling up. I've already made some  
7 commitments for this afternoon, taking advantage of the time  
8 that I've had.

9 MR. CHAKRAVARTY: We should have --

09:41 10 THE COURT: And let me just say on that score,  
11 tomorrow morning -- you know that I was supposed to be at a  
12 committee meeting today and tomorrow -- I have to phone in to  
13 the committee meeting at 8:30 to discuss some business that is  
14 of importance to the First Circuit and so that I can vote on  
15 it. I think that will take no more than an hour and a half.  
16 But we will delay the beginning of trial till about ten o'clock  
17 so that I can do that tomorrow. I say that because it pushes  
18 back the likelihood of a new expert even further, I think.

19 MR. GROHARING: If I could very briefly, your Honor,  
09:41 20 I'll just talk about a couple of the experts. Professor  
21 Williams -- and the Court's already indicated that it believes  
22 that a hearing would be necessary for his testimony the last  
23 time we talked about him. And the government obviously agrees  
24 with that. But we haven't been provided any additional  
25 information since the last discussion of Professor Williams.

1 Obviously, we don't think his testimony is relevant or  
2 helpful at all in this case, but to the extent the defense  
3 still believes it is, we think there should be a *Daubert*  
4 hearing to flush out what his testimony would be, what the  
5 basis -- the reason why he's relying on it for his opinions.

6 We were hopeful that would happen this afternoon, but  
7 that doesn't seem possible at this point.

8 THE COURT: I don't think so.

9 MR. GROHARING: Perhaps tomorrow afternoon if --

09:42 10 THE COURT: Maybe. Let's see how things go. I know  
11 I'm not unique in this. We all have other cases. But I have a  
12 lot of them.

13 MR. GROHARING: Maybe if we could confirm that, in  
14 fact, there will be a hearing, your Honor, then we could figure  
15 out the scheduling piece later.

16 THE COURT: I don't know whether we're going to need a  
17 hearing or just argument on the disclosure.

18 MS. BASSIL: I revised the disclosure in light of  
19 Mr. Kohlmann. I am happy to sit down with the government --

09:42 20 THE COURT: Is there a new one that I haven't seen?

21 MS. BASSIL: Yeah. I thought it was -- it was filed  
22 under seal. But I do have a new one, and I'm happy to sit down  
23 with the government and see if we could work out something in  
24 terms of what he should testify to or not. I'm happy to try to  
25 reach a compromise.

1 THE COURT: I'm looking at the one that was filed  
2 December 6th.

3 MS. BASSIL: Yes. I emailed it to the government.

4 THE COURT: And the other one was --

5 MS. BASSIL: It should say "revised."

6 THE COURT: The other one was a pretrial one, I guess.

7 MS. BASSIL: Right. It should say "revised."

8 THE COURT: There was a relatively brief one that the  
9 government complained about, and then there was a more expanded  
09:43 10 version which was still pretrial, and now there's this. Is  
11 that --

12 MS. BASSIL: Right.

13 THE COURT: Okay. So let me look at this.

14 MS. BASSIL: I did it in light of Mr. Kohlmann.

15 THE COURT: Okay.

16 MR. GROHARING: I don't think it's advanced the ball  
17 any as far as what his testimony would be and how relevant, but  
18 obviously --

19 THE COURT: All right. Well, let me take a look at  
09:43 20 it.

21 MR. GROHARING: -- we can have that discussion at a  
22 later point.

23 Dr. Sageman as well, your Honor. His most recent  
24 disclosure -- the defense has taken off the references to the  
25 social blog, essentially by deleting "social blog," but leaving

1 in the substance of his testimony. The government has  
2 significant problems with the scope of Dr. Sageman's testimony,  
3 and along the same lines as Mr. Chakravarty mentioned a few  
4 moments ago, the lack of disclosures from the defense.

5 At this point we have a Google search that Ms. Bassil  
6 forwarded. That was the discovery of the underlying basis of  
7 Dr. Sageman's opinion. And I don't know what jurisdictions  
8 Ms. Bassil's referring to as far as expert disclosures, but  
9 this by far falls short of what's required.

09:44 10 When experts testify, provide an expert opinion -- in  
11 this case Dr. Sageman says he's relying on studies and  
12 scholars. We have no indication of what those studies are, who  
13 those scholars are, really any of the bases for his testimony.  
14 He's written a couple of books, but it's not incumbent upon the  
15 government to go read books and then figure out what he's  
16 citing in and then figure out how that applies to his testimony  
17 in this case.

18 The disclosures are still -- and this is after  
19 repeated, repeated requests from the government -- woefully  
09:45 20 deficient by any measure. And so I don't think additional  
21 discussion with the defense would be productive in this regard.  
22 I think we need to have a hearing where Dr. Sageman can  
23 testify, we can understand the basis of his opinions, the scope  
24 of his opinions, not something that was put together by  
25 attorneys but his own words what his opinions will be and then

1 how he forms those opinions.

2 We're available to do that at any point, your Honor,  
3 dependent on what his schedule is. But I don't think it's  
4 productive for us to sit down at this point. We've tried to do  
5 that and it really hasn't advanced the ball. And as we're  
6 getting farther and farther along -- and we're talking about  
7 rather substantial testimony from Dr. Sageman. If you look at  
8 the most recent disclosure -- I believe it's as many as ten  
9 pages -- we obviously have issues with much of that.

09:45 10 But a lot of testimony, I'd assume, is based on a lot  
11 of study and different scholars, and we've had no opportunity  
12 to even review that because we don't know what it is. And the  
13 defense expects to call him as early as Monday now. It looks  
14 like that's unlikely with the schedule, but certainly early  
15 next week. And it's putting the government at a great  
16 disadvantage to not be prepared to cross-examine him. That's  
17 not what the rules are designed to permit.

18 So we would ask that we have a hearing and we flush  
19 this out as soon as possible.

09:46 20 THE COURT: Well, we probably -- from the travel  
21 vouchers that I've been seeing, he's not here, is he?

22 MS. BASSIL: He's not here, your Honor.

23 THE COURT: He'll be here on Monday?

24 MS. BASSIL: Yes. And I disclosed exactly the basis  
25 of his opinion. The government has his books. They've read

1       them. And I've disclosed what his studies are. There is no  
2       mystery here. I've given a ten-page notice of what his studies  
3       are, what he is -- you know, and what the basis of his  
4       testimony is.

5               THE COURT: Okay.

6               MS. BASSIL: It's not a mystery.

7               THE COURT: Again, I haven't read the new disclosure.  
8       So I think before we go any further on this, let me read those  
9       that are pertinent and then we can have a further discussion  
09:47 10       about scheduling. But it may well be on Monday -- if it seems  
11       appropriate to have a voir dire or -- then perhaps Monday would  
12       be when we would do it. But we'll -- because he won't be here  
13       before Monday, I don't think.

14              MS. BASSIL: Well, your Honor, I may say that, in all  
15       fairness, if Mr. Kohlmann didn't deserve a *Daubert* hearing, I  
16       sincerely suggest that Dr. Sageman does not.

17              MR. GROHARING: Your Honor, the defense waived --

18              MS. BASSIL: Only because you weren't going to give us  
19       one.

09:47 20              THE COURT: I want to resume with the jury while we're  
21       using their time.

22              MR. CHAKRAVARTY: There's one final point. And,  
23       again, we don't have to hear it now, but it makes a difference  
24       in terms of timing. The defense has served upon us today, and  
25       they gave us notice yesterday, that they would be

1 asking -- they served subpoenas for two FBI agents to come  
2 in -- I think one of the two to come in tomorrow -- to testify  
3 about what they say are inconsistent statements with one of the  
4 government's cooperating witnesses, Kareem Abuzahra.  
5 Specifically, I think the statement was -- Mr. Carney asked  
6 Mr. Abuzahra whether he had ever said that he was prejudiced  
7 towards black people and the witness denied that.

8           There is an FBI 302 which indicates that the witness  
9 had told FBI Agent Brad Davis and Chris Giankura that he is  
09:48 10 prejudiced to black people. But, in fact, when we notified the  
11 agents that they may be necessary to testify about this issue,  
12 they said, "Actually, he didn't tell us that. That's how we  
13 kind of understood it and memorialized it in this 302."

14           Regardless, the government thinks that this is such a  
15 collateral matter and would serve only to inflame the jury and  
16 appeal to the emotional aspects of assessing the witness's  
17 credibility. This is not a material inconsistency, number one;  
18 number two, it didn't even happen. The FBI agents would not  
19 testify, based on our voir dire of them, that that's accurate.

09:48 20           THE COURT: Okay. You flagged the issue. I don't  
21 want to deal with it at this point. I want to resume with the  
22 jury.

23           MR. CHAKRAVARTY: All right. But the subpoena is due  
24 for tomorrow, and as you know, for a Touhy request it's going  
25 down to the Assistant Attorney General down in Washington to



1 assess. My hope was to be able to use the workday in order to  
2 have people know what they need to be doing for tomorrow.

3 One of the witnesses, I believe, is not even in  
4 this -- he's not available; he's on vacation.

5 THE COURT: Okay.

6 MR. CARNEY: I had a couple of matters I wanted to  
7 bring to your attention, but I will not do it now. But one of  
8 them is a request for a hearing on a non-expert-related matter,  
9 and it might be at the close of business today before the jury  
09:49 10 at one o'clock, if I could address you for two minutes to alert  
11 you as to what the issue is.

12 The other thing I wanted to ask is Professor March is  
13 going to be very short, close to completion, then Gregory  
14 Johnsen will be offered. The parties have no issues regarding  
15 scope of testimony or exhibits. There's one document that the  
16 government may want to offer, I'm going to object to it on  
17 hearsay grounds. It may be the only evidentiary dispute during  
18 the testimony.

19 Shall I bring it to your attention now?

09:50 20 THE COURT: What is it?

21 MR. CARNEY: It is a document prepared by the state  
22 department that's called a travel warning.

23 MR. GROHARING: The witness is present in the  
24 courtroom, your Honor. I'd just ask that Mr. Johnsen leave  
25 before we discuss it. I think my response may be relevant to

1 his potential testimony.

2 THE COURT: All right. Let's postpone it. We have  
3 the jurors lined up. Before he testifies we'll address it.

4 MR. CARNEY: Okay. I just -- I wanted to alert you.

5 THE COURT: Okay. All right.

6 THE CLERK: All rise for the jury.

7 (The jury enters the courtroom at 9:50 a.m.)

8 THE CLERK: Please be seated.

9 THE COURT: Good morning, jurors.

09:51 10 THE JURORS: Good morning.

11 THE COURT: We had a couple of things to resolve.  
12 We're ready to resume with Dr. March.

13 ANDREW F. MARCH, resumed

14 CONTINUED CROSS-EXAMINATION

15 BY MR. CHAKRAVARTY:

16 Q. Good morning, Doctor.

17 A. Good morning.

18 Q. I won't keep you very much longer this morning.

19 Incidentally, you indicated yesterday that you had written  
09:52 20 a book. What's the name of the book?

21 A. "Islam and Liberal Citizenship -- The Search for an  
22 Overlapping Consensus."

23 Q. And when did you publish that?

24 A. 2009.

25 Q. And you described yesterday the process of peer review.

1 And that book was peer-reviewed?

2 A. Yes.

3 Q. And amongst the peer-reviewers was Dr. Mohammad Fadel?

4 A. I wouldn't know that. Only the editor of the press would  
5 know that. That's why it's blind peer-reviewed.

6 Q. I see. Do you know Dr. Mohammed Fadel?

7 A. I do know Dr. Mohammed Fadel.

8 Q. Is he in the courtroom today?

9 A. He's right over there.

09:53 10 Q. And you recognize that he's also going to be a witness in  
11 the case?

12 A. Yes, sir.

13 Q. So you talked at length yesterday about Aman, and I think  
14 I may have confused you with regards to one of the exhibits and  
15 the questions that I asked you?

16 MR. CHAKRAVARTY: So I'm going to call up Exhibit 420,  
17 please.

18 THE COURT: This is from?

19 MR. BRUEMMER: Me, your Honor.

09:53 20 MR. CHAKRAVARTY: Yeah, from our computer.

21 BY MR. CHAKRAVARTY:

22 Q. Now, just to resituate the jury, you had explained that  
23 there was this notion of Aman or 'ahd or 'aqd or --

24 A. Mithaq.

25 Q. -- mithaq -- thank you -- which is this notion of a pact,

1 a security compact, which is a doctrine within the vast  
2 majority of Muslim theological scholarship. Is that fair to  
3 say?

4 A. Yes.

5 Q. And is it also the case that in some circumstances  
6 Sharee'ah requires this notion of defensive jihad, or jihad  
7 against an outside -- kind of a non-Muslim invading force that  
8 has attacked a Muslim country, there's this doctrine of jihad  
9 that applies in those circumstances?

09:54 10 A. Yes; that would be a defensive jihad.

11 Q. And you've said before, have you not, that it's okay in  
12 Islamic law to fight U.S. soldiers in Iraq and Afghanistan and,  
13 in fact, most scholars say that this is a duty, in fact. Is  
14 that right?

15 A. In Islamic law it's permissible law for those who are in  
16 those countries to fight outside invaders.

17 Q. So my question to you was: You've said, have you not,  
18 that if it's okay in Islamic law to fight U.S. soldiers in Iraq  
19 and Afghanistan, most scholars say this is a duty, in fact?

09:54 20 A. Right. Where you say it's okay to fight, you need a  
21 subject to that sentence.

22 Q. Okay. I'm just asking you whether you said most scholars  
23 say this is a duty, in fact.

24 A. Yes.

25 Q. And it is, in fact, a duty, isn't it --

1 A. Yes.

2 Q. -- for Islam?

3 All right. So going back now to Exhibit 420, I think I  
4 highlighted this paragraph, and I asked you whether the author  
5 of this paragraph was indicating that it was proper to kill  
6 Paul Johnson, and you said you could not arrive at that  
7 conclusion by reading this paragraph. So I'm now going to  
8 highlight the larger paragraph, because I don't want to confuse  
9 you on the question.

09:55 10 "Similarly, any American or other Westerner who is in the  
11 peninsula doing any type of work that is not contributing to  
12 the war effort against the Muslims, such as maintainers of oil  
13 fields, civil engineers, et cetera, then I also do not agree  
14 with targeting them and killing them simply because they are  
15 Americans. I support their expulsion, not their killing.

16 "In contrast, a man such as Paul Johnson was helping in  
17 the maintenance and repair of American Apache helicopters.  
18 This is, to anyone who has sight with which they can see or a  
19 brain with which they can think, a totally different story."

09:56 20 Now, let me ask you the question again. Based on your  
21 reading of this paragraph isn't it clear that the author is  
22 saying that it's permissible to kill Paul Johnson because he  
23 was helping -- he was maintaining and repairing American Apache  
24 helicopters?

25 A. I wouldn't say that it's exactly clear. What I would say

1 that it's exactly what it says, that it's a different story and  
2 requires a different type of analysis. But it is saying it is  
3 absolutely impermissible to kill civilians, and then the issue  
4 of people that are involved in military activities, that that's  
5 a separate question that needs different kind of ethical and  
6 legal analysis.

7 Q. That wasn't my question. You know that Paul Johnson was a  
8 civilian, right?

9 A. I don't know Paul Johnson.

09:56 10 MR. CHAKRAVARTY: If we could go to the next page,  
11 please?

12 Q. And do you still have that same scholarly distinction when  
13 the defendant says, "Those who fight us, not those who carry  
14 the same nationality as those who fight us," is that confusing  
15 to you as to whether the defendant said that he feels it's  
16 Islamically proper to attack people who are fighting Muslims?

17 A. See, again, that's not a sufficient amount of data for me  
18 to answer --

19 Q. Dr. --

09:57 20 A. -- because you need a subject to that sentence.

21 Q. Can you please just answer my question and not go into a  
22 broader explanation, and Ms. Patel will have that opportunity  
23 to ask you about a broader explanation.

24 I'm just asking you: Is this as confusing to you as the  
25 first sentence?

1 A. I'm trying to be truthful to the jury, and I can't say  
2 something that I don't believe is truthful. If I were teaching  
3 this, what I would say is that --

4 Q. Well, I want you to be truthful as well -- everybody in  
5 the courtroom wants you to be truthful -- but we also want you  
6 to be responsive.

7 A. Yes.

8 Q. So my question to you is: Is this sentence confusing to  
9 you?

09:57 10 MS. PATEL: Objection, your Honor. He's not allowing  
11 the witness to be responsive to the question.

12 THE COURT: Overruled.

13 You may answer the question.

14 THE WITNESS: What it's saying is it's permissible for  
15 somebody to fight in response to those who fight us; it doesn't  
16 say who can do this.

17 BY MR. CHAKRAVARTY:

18 Q. Okay.

19 A. That's using the passive voice.

09:57 20 MR. CHAKRAVARTY: Can we go to 8, please?

21 Q. All right. In this portion of the statement there's a  
22 quote of somebody else who had been posting that the defendant  
23 was responding to, and the other person says, "And another  
24 point, if you agree with the killing of Paul Johnson, then your  
25 argument comes back to you since the Ummah and many of the

1 Salafi scholars objected harshly towards it and it caused a lot  
2 of trouble for the mujahideen, which resulted in the martyrdom  
3 of Ameer Abu Haajar. So if that's the case, your arguments  
4 regarding what the Muslims generally think about the attacks  
5 are of no use and should be left aside," to which the defendant  
6 responds, "Actually, most of the Muslims I know had no problem  
7 with his killing, they just disagreed with the manner in which  
8 he was killed. He was directly involved with the American  
9 military by fixing their Apaches. So the attack can clearly be  
09:58 10 justified for those searching for the truth."

11 My question to you, Dr. March, and please listen  
12 carefully --

13 A. Yes.

14 Q. -- is this confusing to you as to what the author intended  
15 with regards to whether it was appropriate to kill Paul  
16 Johnson?

17 MS. PATEL: Objection, your Honor. Asking about the  
18 author's intent which was subject to --

19 THE COURT: No. Overruled.

09:59 20 You may answer it.

21 THE WITNESS: What the statement below the block quote  
22 says is, "Most of the Muslims I know had no problem with his  
23 killing."

24 BY MR. CHAKRAVARTY:

25 Q. I read the statement, sir. I'm asking you whether it's



1 confusing, in your expert opinion, about deducing what the  
2 author is thinking and saying.

3 A. There is ambiguity, sure.

4 Q. Okay. Okay. Thank you. That answers --

5 A. It could mean multiple things.

6 Q. Well, that answers my question. Thank you.

7 MR. CHAKRAVARTY: We'll go to 419, please. Could we  
8 go to page 2? I'm sorry. Go back to page 1.

9 Q. And this is the same Abu Sabaayaa that you were talking  
09:59 10 about yesterday?

11 A. Yes.

12 Q. What does Abu Sabaayaa mean?

13 A. So it depends. I need to see it in Arabic. If the first  
14 letter is a sheen as opposed to a sud, I believe it would be  
15 something related to the father of children, but somebody could  
16 perhaps correct me. I don't have a translator here. I'm not  
17 sure if that's accurate.

18 Q. I'm not either.

19 MR. CHAKRAVARTY: But could we go to page 2?

10:00 20 Q. The defendant says, "If we are speaking about the American  
21 military presence in the peninsula or any other hostile forces  
22 or people, then I wholeheartedly agree with applying the above.  
23 However what we saw with the two Riyadh attacks did not fall  
24 under this categorization. The intended targets and the  
25 victims were never proven to have been involved in any hostile

1 acts against the Muslims. As far as we know from all the  
2 available reports, they were mostly Muslim migrants who were  
3 working odd jobs, and it is highly unlikely that American  
4 military forces would house their troops among these people,  
5 unlike the case with the attack of '96 where U.S. Marines  
6 military barracks were struck killing over a dozen Marines,  
7 because the brothers struck a compound that housed, you guessed  
8 it, Marines, not migrant workers. There is a contrast between  
9 these recent Riyadh attacks which did not cause the deaths of  
10:01 10 any known American military personnel and, for example, the  
11 killing of Paul Johnson, who was admittedly working on Apache  
12 helicopter repairs."

13 Does this help clarify for you the defendant's position  
14 with regards to feeling that it was appropriate to kill people  
15 who were helping the American military?

16 A. I'm a scholar of Islamic law; I'm not a scholar of  
17 psychology. I can explain this to you in terms of Islamic  
18 legal doctrine, perhaps with some comparison to the Geneva  
19 Conventions. I can't talk to you about feelings.

10:01 20 Q. Thank you. So the answer is no, it doesn't help  
21 crystalize that for you?

22 A. It helps crystalize some of his views on Islamic legal  
23 doctrine, not on his feelings.

24 MR. CHAKRAVARTY: Okay. Can we go to page 5, it looks  
25 like?

1 Q. And, again, this is a post by Abu Sabaayaa, and he's  
2 responding to his friend Abu Dujana who says, "Some scholars  
3 say this. That's correct. Others don't. I refer you to  
4 Shaykh 'Abdullah bin Naasir ar-Rasheed's awesome book 'Intiqaad  
5 al-I'tiraad.' From the necessities of this view, however, that  
6 the apostate government can offer treaties of this sort is the  
7 prohibition of killing Jews in occupied Palestine, prohibition  
8 of killing soldiers in Iraq, prohibition of killing Russian  
9 soldiers in Chechnya and so on because the governments of all  
10:02 10 of those respective countries have offered treaties to those  
11 countries and to their soldiers. This is how I see it.  
12 Correct me if I'm mistaken."

13 And so the defendant responds, "No, that would not  
14 necessitate the prohibition of killing those whom you mentioned  
15 because they are clearly making war on the Muslims of those  
16 respective lands, and as I mentioned, this causes their pact to  
17 be broken and null."

18 Did I read that correctly?

19 A. Yes, sir.

10:02 20 MR. CHAKRAVARTY: Thank you for your time, Doctor.

21 THE WITNESS: Thank you.

22 MS. PATEL: No redirect, your Honor.

23 THE COURT: All right. Thank you, Dr. March. You may  
24 step down.

25 (The witness is excused.)

1 MR. CARNEY: Your Honor, the defendant calls Gregory  
2 Johnsen.

3 GREGORY JOHNSEN, duly sworn

4 THE CLERK: Please be seated.

5 State your name and spell your last name for the  
6 record, keep your voice up and speak into the mic so everyone  
7 can hear you.

8 THE WITNESS: Gregory Johnsen, last name spelled  
9 J-O-H-N-S-E-N.

10:03 10 DIRECT EXAMINATION

11 BY MR. CARNEY:

12 Q. Good morning, Mr. Johnsen.

13 A. Good morning.

14 Q. Could you tell the members of the jury where you were  
15 born.

16 A. I was born in Nebraska.

17 Q. Where do you currently live?

18 A. I live in Princeton, New Jersey.

19 Q. And what kind of work do you do there?

10:04 20 A. I'm currently a Ph.D. candidate in the Department of Near  
21 Eastern Studies in Princeton University.

22 Q. Could you give us a little bit about your educational  
23 background beginning with your college?

24 A. Certainly. I graduated with a BA in history from Hastings  
25 College. While I was an undergrad I studied abroad at the

1 American University in Cairo in 2000.

2 Q. Where is the American University in Cairo?

3 A. At that point it was located downtown in -- very near to  
4 Tahrir Square, which is where the center of protests that we've  
5 seen in Egypt over the past year have taken place. After I  
6 graduated from college I joined the Peace Corps, and I was in  
7 Jordan for 18 months, from -- in 2001 and 2002 until we were  
8 evacuated. After that I was --

9 Q. Can you just tell us -- or remind us what the Peace Corps  
10 is?

11 A. Certainly. It's a United States government program where  
12 volunteers from the U.S. are sent abroad to a variety of  
13 different countries in which to work with the individuals in  
14 those countries to help them out. It was a program started by  
15 President Kennedy. I, as I mentioned, served in Jordan, and  
16 served as an English teacher there.

17 Q. What did you do next?

18 A. After I left the Peace Corps, after the close of service I  
19 was a Fulbright Fellow in Yemen in 2003 and 2004. After I  
20 finished my Fulbright Fellowship there I studied and attained a  
21 master's degree in Near Eastern Studies at the University of  
22 Arizona. And after that I applied to and was accepted to a  
23 joint Ph.D. program in history and Middle Eastern studies at  
24 NYU, and then I transferred after the first year, to follow my  
25 advisor, to Princeton University.

1 Q. Have you obtained a master's degree?

2 A. I have, yes.

3 Q. And in what subject?

4 A. In Near Eastern Studies.

5 Q. Can you tell us briefly what is meant by Near Eastern  
6 Studies?

7 A. Absolutely. It's a department and a phrase that is fairly  
8 synonymous with Middle Eastern Studies, and so often they're  
9 used interchangeably. It tends to refer to the countries in  
10:06 10 North Africa: Morocco, Libya, Tunisia, Algeria and Egypt, as  
11 well as the countries we tend to think of in the Middle East,  
12 so Jordan, Syria, Yemen, Saudi Arabia. It also often involves  
13 Iran, Turkey and Israel.

14 Q. Did you have a special area of focus in your studies in  
15 the master's degree as well as your Ph.D.?

16 A. Yes. I specialize and I focus on Yemen. And  
17 particularly, contemporary Yemen and al Qa'ida within Yemen.

18 MR. CARNEY: Could we please call up Exhibit 749,  
19 which is in evidence, your Honor.

10:06 20 THE COURT: And the government's computer?

21 MR. CARNEY: Yes, your Honor. Thank you.

22 THE COURT: I see what it is. Thank you.

23 BY MR. CARNEY:

24 Q. Now, this map has been displayed in the past. Can you  
25 just help us by referencing what's appearing on this map?

1 A. Certainly. This is a picture, a map of the country of  
2 Yemen.

3 Q. And where, generally, is it located in the Arab Peninsula?

4 A. It's located on the southern tip of the Arabian Peninsula,  
5 so right south of Saudi Arabia, and it's across the Gulf of  
6 Aden from Somalia, and the Horn of Africa is quite close to it.

7 Q. And this country and al Qa'ida are your focus of your  
8 studying?

9 A. Yeah. This is something that I've been working on since  
10:07 10 before I was a Fulbright Fellow in 2003, that I've been  
11 focusing on for nearly a decade now, yes.

12 Q. What is required to get a Ph.D. at Princeton University?

13 A. Right. So basically what happens is that for your first  
14 two years you take coursework, which at Princeton is something  
15 where you tend to read a lot of Arabic text, you spend time  
16 with the professors. Princeton requires that you have a major  
17 research language -- mine is Arabic -- and that you have  
18 reading proficiency in one other European language as well as  
19 one other Near Eastern language. Mine are French and Persian.  
10:08 20 Those are the exams that I took to pass out of the reading  
21 requirements.

22 At the end of the two years, in addition to the language  
23 exams that you take, you're also required to pass what is  
24 commonly referred to as general exams. So these are exams that  
25 are administered by a professor in a particular field. And so

1 I did three of these with three professors at Princeton  
2 University, and I passed and have moved on to what's called the  
3 dissertation stage. And this is the time when an individual  
4 will focus on one particular subject and work on writing his  
5 dissertation, which is the stage I'm currently in.

6 Q. Is there another name for the general exams?

7 A. Oral exams are sometimes used, at least at Princeton.  
8 "Generals" is sort of the student shorthand for the exam.

9 Q. At other universities are they called "orals"?

10:09 10 A. Yes, they are.

11 Q. When you complete your dissertation, what happens to it?

12 A. When I complete the dissertation I'll hand it off to the  
13 committee that I've assembled and they will discuss it. They  
14 will meet, they will read it, and then assuming, hopefully,  
15 that it passes, then I will have attained my Ph.D., my  
16 doctorate.

17 Q. And will you then be "Dr. Johnsen"?

18 A. I will. I'll make sure people call me that, yes.

19 (Laughter.)

10:09 20 Q. You'll have to wait awhile.

21 A. Right.

22 Q. You mentioned that you went on a Fulbright Fellowship. Is  
23 that the only fellowship you've received?

24 A. No, it's not.

25 Q. Let's begin with Fulbright.



1 A. Sure.

2 Q. Could you explain to us what a Fulbright Fellowship is?

3 A. Absolutely. It's a competitive fellowship that the United  
4 States government gives to -- often to recent college graduates  
5 to allow them to get a jumpstart on research. And so what you  
6 do is you put together a proposal, you sort of outline what it  
7 is that you want to look at in a particular country. Often,  
8 you need to obtain letters of support from individuals or  
9 institutions within that country, demonstrate some sort of  
10:10 10 language proficiency, that when you get there, you'll be able  
11 to do the research that you've indicated that you want to carry  
12 out.

13 Q. Where did the Fulbright Fellowship allow you to study?

14 A. It allowed me to study at language schools within Sana'a,  
15 which is the capital of Yemen, and it provided the financial  
16 support for me to live and do research in Yemen for the 11  
17 months that I was there.

18 Q. What period of time were you in Yemen as a Fulbright  
19 Fellowship --

10:11 20 A. I was there in 2003-2004. So I got there in the fall of  
21 2003 and I stayed through August of 2004.

22 Q. Did you receive an extension?

23 A. I did receive an extension. Usually, it ends about May or  
24 June. The initial grant is often for nine months. I applied,  
25 and was awarded, an extension to continue my work there for an

1 additional three months.

2 Q. Have you received any other fellowships?

3 A. Yes, I have. So when I attended the University of  
4 Arizona, both years there were funded by a U.S. government  
5 program known as FLAS, which stands for "Foreign Language and  
6 Area Studies." This is also a competitive fellowship that the  
7 university administers to students that it wants to attract.

8 In the summer of 2005 I received a fellowship from the  
9 American Institute for Yemenese Studies which is the  
10:11 10 organization that facilitates research for Americans working in  
11 Yemen. When I went to NYU I received what's called a McCracken  
12 Fellowship which pays for the Ph.D. When I went to Princeton,  
13 I received the same offer, which basically pays for your -- all  
14 of your coursework, all the dues is paid, and then you receive  
15 a fellowship, a stipend on top of that, which allows you to  
16 live.

17 I just -- as in August of this year, I returned from Cairo  
18 where I had what's known as a Fulbright-Hays Fellowship, which  
19 is similar to the Fulbright but it's a more advanced  
10:12 20 fellowship.

21 Q. When you were studying pursuant to the Foreign Language  
22 and Area Studies, was there a particular focus in terms of  
23 language?

24 A. Yes. My Foreign Language and Area Studies Fellowship was  
25 for the study of Arabic.

1 Q. And where did you live when you were having this  
2 fellowship?

3 A. So there are Foreign Language and Area Studies grants that  
4 allow you to study Arabic in the United States, and there's  
5 also summer grants that allow you to study -- to study abroad.  
6 When I had the two academic-year fellowships, because I was  
7 obviously enrolled at the University of Arizona, I was living  
8 in Tucson, Arizona, studying Arabic.

9 Q. In the summer of 2005 --

10:13 10 A. Right.

11 Q. -- where did you study?

12 A. In the summer of 2005 I had the fellowship from the  
13 American Institute for Yemenese Studies and I was in Sana'a  
14 University continuing research that I had done in 2003-2004, as  
15 well as studying Arabic there.

16 Q. Have you written for any encyclopedias?

17 A. Yes, I have.

18 Q. Can you tell us how that comes about?

19 A. Right. So what happens, basically, in that situation is  
10:13 20 that an editor of the encyclopedia, what they do is they  
21 identify experts within a particular field and then they send  
22 out invitations and they say, "We would like you to write on a  
23 particular topic." And so I've written on topics pertaining to  
24 Yemen. And so they solicit opinions and they then send out the  
25 invitations, which is basically the process.

1 Q. How many different encyclopedias have you been asked to  
2 write for?

3 A. I've been asked to write for a number. Unfortunately,  
4 because, given my focus on Yemen, there's often more work than  
5 there is time to do it, I believe I've accepted two different  
6 encyclopedia entries.

7 Q. Do you recall the names of those?

8 A. Yes. One was on an individual Shaykh Abd al-Majid  
9 al-Zindani, who is a cleric in Yemen who is currently still  
10:14 10 alive; the second is on the City of Sana'a, so sort of an  
11 encyclopedia entry on the history of that city.

12 Q. Are you in the process of writing a book?

13 A. I am in the process of writing one book and working on the  
14 dissertation, yes.

15 Q. Is it the great American novel or something in your field?

16 A. No. I wish it was the great American novel. It's a book  
17 on al Qaeda in Yemen. So it traces the history of the  
18 organization in Yemen, as well as up to the present day what's  
19 happening.

10:14 20 Q. When do you expect to complete the book?

21 A. The book will be submitted to the editor in the next week,  
22 and it should be published -- it's scheduled for publication in  
23 September of 2012.

24 Q. Do you have any teaching experience in your field?

25 A. I do. I've been what, at least at Princeton University,

1 is known as a preceptor. And so these are individuals that in  
2 other places they're sort of known as teaching assistants. And  
3 at Princeton how it works is that there are two -- there's  
4 three meetings for the course every week. The professor runs  
5 two, often in a lecture style; and in the third meeting of the  
6 week, then a preceptor will lead the class discussion. So I've  
7 done that at two different courses at Princeton. I've also  
8 taught and lectured at what's known as the CIA University.

9 Q. What is that?

10:15 10 A. This is something that the CIA runs for some of its new  
11 agents, new trainees, individuals. I don't often know where  
12 the people in the course are coming from, but they are all  
13 working for the U.S. government. And they -- once again,  
14 similar to the encyclopedia, they solicit outside experts to  
15 come in and talk about a particular expert. So when I lecture  
16 there and when I teach there I do so on al Qaeda in Yemen.

17 Q. And what does "CIA" stand for?

18 A. CIA stands for Central Intelligence Agency.

19 Q. And is that the primary intelligence agency of the United  
10:16 20 States?

21 A. I believe it is. It's also one of many intelligence  
22 agencies in the U.S.

23 Q. Where is it located?

24 A. It's located in Langley, Virginia, to the best of my  
25 knowledge.

1 Q. Have you served as a consultant to any government  
2 agencies?

3 A. Yes. I've served as a consultant and advised numerous  
4 different governmental and non-governmental agencies both in  
5 the United States, as well as the Foreign and Commonwealth  
6 Office in the U.K.; the Secret Intelligence Service in Canada.  
7 In the U.S. I often talked to the State Department, to the FBI,  
8 National Intelligence Council and so forth. For instance, when  
9 the current U.S. ambassador, prior to him taking up his post,  
10:17 10 the State Department asked --

11 Q. The ambassador to whom?

12 A. That's Ambassador Gerald Feierstein.

13 Q. Ambassador to whom?

14 A. To Yemen.

15 And so prior to him leaving the U.S. to take up his post  
16 to be ambassador to Yemen, the State Department asked several  
17 outside experts to come in and brief him. And, for instance, I  
18 was the one tasked with briefing him on al Qa'ida in Yemen.

19 Often, congressional or senate staff will get in touch  
10:17 20 with me prior to a senator or a congressman taking a trip to  
21 Yemen. They'll ask for my advice. They'll ask who they should  
22 meet for *[sic]*, ask for me to give them a rundown on what's  
23 taking place in the country.

24 Q. Have you advised the Federal Bureau of Investigation, the  
25 FBI?

1 A. Yes. Both informal and in formal settings in both Yemen  
2 and in the United States, agents have taken me out to dinner,  
3 solicited my opinion. There have been numerous phone calls,  
4 numerous emails asking for what it is that I think about a  
5 particular topic, things of that nature, yes.

6 Q. And have you consulted to the United States State  
7 Department?

8 A. Yes, I have, on numerous occasions. And, again, in both  
9 what I would describe as formal and informal settings.

10:18 10 Q. What is the National Counterterrorism Center?

11 A. This is an organization that was set up in the wake of  
12 September 11th really to attempt to break down some of the  
13 barriers between the FBI and the CIA and other intelligence  
14 agencies, sort of as a clearinghouse, at least as I understand  
15 it and as it's been explained to me.

16 Q. Have you consulted with that agency?

17 A. Yes, I have. So they often run retreat conferences, and  
18 they've asked me to speak on al Qa'ida in Yemen a number of  
19 different times. They've had me down to their headquarters to  
10:18 20 lecture and to talk and give my opinions and advice about where  
21 I see al Qa'ida in Yemen developing, the history of the  
22 organization and so forth.

23 Q. Have you addressed the United States Department of  
24 Defense; specifically, the undersecretary of defense for  
25 strategy?

1 A. Yes, I have. We've had -- there are often, for example,  
2 again, outside experts that are brought in to discuss  
3 particular topics. They often try to get a wide range  
4 so -- with the U.S. Department of Defense, as you're referring  
5 to, I was brought in, again, for my knowledge and expertise on  
6 al Qa'ida in Yemen.

7 Q. What is the National Intelligence Council?

8 A. This is, again, another organization that, obviously,  
9 works on intelligence. And they, like many of the other  
10:19 10 organizations, have asked me to come in and to speak about  
11 al Qa'ida in Yemen, the history of the organization and Yemeni  
12 politics, generally.

13 Q. What is the U.S. Special Forces Command?

14 A. This is a command center that's located in Tampa, Florida,  
15 very close to what's known as CENTCOM. The U.S. Military, at  
16 least as I understand it, divides the globe into particular  
17 regions. CENTCOM handles what's often referred to as the  
18 Middle East, and the Joint Special Operations Command is next  
19 to them. So they've had me down to Tampa, again, to talk about  
10:20 20 al Qa'ida in Yemen, talk about some of the ways that I see  
21 fissures within the organizations that the U.S. could use to  
22 potentially disrupt and defeat the organization.

23 Q. Are there other circumstances where you have made  
24 presentations in your area of expertise?

25 A. Yeah. I'm often brought in, as I said, for a variety of



1 governmental and non-governmental organizations. There are  
2 often roundtables where -- for instance, there are basically  
3 two type of roundtables that I participate in: one is sort of  
4 Yemen-specific where they'll bring in five or six different  
5 Yemen experts. I'm often tasked -- in fact, I'm always tasked  
6 with al Qa'ida in Yemen on those roundtables.

7 And then there are the sort of broader roundtables that  
8 governmental organizations will convene. And these are -- say  
9 you have an expert on al Qa'ida in Iraq or you have somebody on  
10:21 10 al Qa'ida in Saudi Arabia or bin Laden or Ayman al-Zawahiri.  
11 And in those settings, then I'm tasked with, again, talking  
12 about al Qa'ida in Yemen.

13 Q. Have you ever testified in Court for a federal prosecutor?

14 A. I have not, no.

15 Q. Have you ever testified previously in court for a defense  
16 counsel?

17 A. I have not, no.

18 Q. Have you ever testified in court ever?

19 A. No.

10:21 20 Q. Have you ever testified before Congress?

21 A. Yes, I have.

22 Q. Tell us a circumstance.

23 A. Certainly. So after what's been known as the Underwear  
24 Bomber who attempted to down a plane on Christmas Day 2009,  
25 this is really the moment where Yemen sort of burst into the

1 national consciousness here in the United States. The Senate  
2 Committee on Foreign Relations convened a hearing on Yemen on  
3 January 20, 2010, and I was asked to prepare a written  
4 testimony as well as to answer questions from the senators  
5 present there.

6 Q. Mr. Johnsen, do you speak any other languages besides  
7 English?

8 A. Yes. I work in Arabic and I have a reading proficiency,  
9 as I mentioned, in Persian and in French.

10:22 10 Q. Is Arabic viewed as a language that has different dialects  
11 or different focuses?

12 A. Absolutely. It has a wide variety of dialects, so much so  
13 that, you know, people in Morocco can have trouble  
14 understanding people in Yemen and vice-versa. And even within  
15 Yemen there's a great variety of dialects, particularly in the  
16 spoken language, and it becomes something where there are often  
17 amusing situations when one individual will misinterpret or  
18 misunderstand someone else even though they carry, again, in  
19 Yemen, the same citizenship.

10:23 20 Q. Do you have two proficiencies in Arabic?

21 A. Yes. So in the written language, modern standard Arabic  
22 as it's often referred to, yes. So that's the language that --  
23 the text that I often deal with, newspaper articles and so  
24 forth, are written in. And then the interviews that I conduct  
25 in Yemen are done in the colloquial dialect. That's often

1 known as San'ani, which is the adjective from the capital of  
2 Yemen, Sana'a, where I spent the most amount of my time.

3 Q. Is that often called "Yemeni"?

4 A. Yeah, it's -- it's -- in shorthand it's often referred to  
5 as "Yemeni" because it's the dialect of Yemen that is most  
6 commonly spoken and that most people understand.

7 Q. How important is it to your study of Yemen that you speak  
8 Arabic in your opinion?

9 A. In my opinion it's essential. I like to think of what I'm  
10:23 10 doing as sort of putting together a puzzle. And so you have to  
11 take different pieces from different things in order to  
12 construct something that makes sense. And if you're only using  
13 English, or if you're only using French or one of these other  
14 languages, then you really don't have the opportunity to see  
15 everything else that's coming in. And the puzzle -- you're  
16 trying to make sense of reality.

17 So the business that I'm in, what it is that I study, I  
18 try to look at what's happening in Yemen and make sense of it  
19 so we all sort of have a better understanding of what's  
10:24 20 happening, why that's happening, and how it is that the U.S.  
21 can do a better job of interacting with Yemen, defeating  
22 al Qa'ida and so forth.

23 So if you're only using a few puzzle pieces, or only the  
24 puzzle pieces in English, then the picture that you're  
25 presenting to people is -- really doesn't bear that close a

1 resemblance to reality.

2 So it's absolutely essential, in my opinion. And  
3 Princeton University wouldn't allow me to go on to write a  
4 dissertation if I hadn't passed the language exams.

5 Q. Can translators be an adequate substitute for speaking and  
6 writing and reading Arabic?

7 A. In my opinion, at least in the work that I do, no.

8 Translators can only, obviously, translate so much. Some of  
9 them come from different backgrounds and there's often -- you  
10:25 10 often have to sort of read between the lines. I sort of talk  
11 about it as putting on a Yemeni decoder ring. And so often  
12 it's not just knowledge of the language that's important, it's  
13 the context in which those words are being spoken. And so you  
14 have to know who's talking to whom, what it is that they're  
15 referring to.

16 And at the same time, if you walk around -- say, someone  
17 who looks like myself who obviously stands out in Yemen and you  
18 need a translator to go along with you and to talk to different  
19 people, that sends a particular sort of message to the people  
10:25 20 that you're talking to as opposed to someone who's able to  
21 confer with them and discuss with them in the language in which  
22 they speak.

23 Q. There's been testimony in this trial that an alleged  
24 expert uses Google translation. Are you familiar with that?

25 A. I'm familiar with Google Translate. I've never used it.

1 MR. GROHARING: Objection. This is beyond the notice  
2 that the defense provided and there was no notice that the  
3 expert would be providing any opinions on Google Translate or  
4 any other software.

5 MR. CARNEY: I'm just asking if he's familiar with it  
6 and what it is and whether it can serve as a substitute.

7 THE COURT: You may have it.

8 BY MR. CARNEY:

9 Q. Are you familiar with what Google Translate is?

10:26 10 A. Yes, I am.

11 Q. What is it, please?

12 A. It's -- as I understand it, it's a computer program that  
13 if you have an Arabic text, for instance, you can have the  
14 Google Translate translate that text. Most scholars and most  
15 analysts that I know are very distrustful of Google Translate  
16 because it's a computer program. It doesn't have a lot -- it  
17 doesn't have the flexibility that the human mind has. And so  
18 it will often translate words that it thinks -- it will  
19 translate names as sort of nouns or as words as opposed to the  
10:27 20 names that they are.

21 And the translation that's done -- I've seen the product,  
22 although I haven't used it -- and it's not one that  
23 academics -- academics that I know, academics at Princeton nor  
24 myself, would be comfortable using.

25 Q. How many times have you been to Yemen?

1 A. I've been to Yemen on four separate occasions.

2 Q. When was the first time you've been there?

3 A. The first time was 2003-2004 as a Fulbright Fellow; after  
4 that in the summer of 2005 as a fellow for the American  
5 Institute for Yemenese Studies; following in the summer of 2006  
6 when I was the program coordinator chaperone for a State  
7 Department program, "Critical Languages"; and then the final  
8 time, the last time that I've been to Yemen, was in the summer  
9 of 2009.

10:27 10 Q. How long did you stay on each of these four visits?

11 A. So on the first visit I was there for roughly 11 months.  
12 I think 11 months and a couple of weeks. The second time I was  
13 there for the entire summer, which was May to August, the end  
14 of May to the beginning-middle part of August. It was the same  
15 in 2006. It was the entire summer. And then in 2009 I was  
16 there for five, six weeks.

17 Q. How important do you believe it is for your study of Yemen  
18 that you actually go to the country?

19 A. Again, this is something that's incredibly important.

10:28 20 There's no substitute for it. I mean, what we have is -- if  
21 you look at Yemen from the United States, it looks very black  
22 and white. But it's almost sort of like looking at an icecap,  
23 right? Like you can see the first little bit that's above the  
24 water but you can't see the 90 percent. And I think that's --  
25 that's underneath the water.

1           And I think that's the great thing about going to Yemen is  
2   it's almost like putting on sort of scuba gear and going down  
3   and examining everything that you couldn't see from the United  
4   States. I mean, things look a particular way from several  
5   thousand miles away, and when you get down on the ground you  
6   can see the nuances there.

7           And so, again, my work I don't think would be respected --  
8   it wouldn't be cited, I wouldn't be asked to do and speak to  
9   some of the groups to whom I speak, if I wasn't -- if I didn't  
10:29 10   have that experience on the ground. That experience on the  
11   ground is what allows me to form opinions that people rely on.

12   Q.   When you go to Yemen for a several-month period, what type  
13   of housing do you live in?

14   A.   It depends. So I've stayed in the American Institute for  
15   Yemenese Studies, in the hostel there, which is sort of an old  
16   Yemeni house. In Yemen they have these tower houses that are  
17   made out of these mud bricks that have beautiful alabaster  
18   windows. So I've stayed there. I stayed -- when I was the  
19   coordinator chaperone for the State Department program I stayed  
10:29 20   with the students in the language center.

21           I've also rented a private residence that I used for most  
22   of the time when I was a Fulbright Fellow, and that's -- which  
23   was right in downtown Sana'a on 26th of September, which is  
24   near the Yemen parliament building. So there's been a wide  
25   range of places. I've also stayed with different friends in

1 less -- in houses that often have no electricity, or no running  
2 water, things of that nature.

3 Q. Can you give the jurors a range of the people that you  
4 would interact with when you're living in Yemen?

5 A. Absolutely. So I've talked with people at the highest  
6 levels of government down to sort of day laborers. So I've had  
7 interviews with people like the Yemeni foreign minister,  
8 individuals within the Yemeni military, many of the Yemeni  
9 tribes I speak to; I have good friends who are Yemeni  
10:30 10 journalists. And most of the friends that I spend the vast  
11 majority of my time with are sort of the day laborers, the  
12 individuals who by western standards wouldn't be considered  
13 very well educated but I found them to be, you know, incredibly  
14 wise and very good friends, as well as guides to the country,  
15 because these are the people who are living there. They know  
16 what's happening on the ground.

17 And so both in a personal -- from a personal point of view  
18 because they're my friends, obviously, as well as from a  
19 professional point of view, talking to a wide range of  
10:31 20 individuals and from all different segments of society has,  
21 once again, been something that has allowed me to just sort of  
22 triangulate what it is I'm thinking and saying, because you  
23 can't take just sort of one piece and then magnify it and hope  
24 to present the reality of Yemen; I think you have to talk to  
25 different people, and so that's what I have attempted to do.



1 And Yemen's just -- I mean, quite frankly, Yemen is a great  
2 place to do that.

3 Q. So you find value in speaking to people who might not have  
4 an advanced education but have a lot of experience and judgment  
5 and wisdom?

6 A. Absolutely. These are the people who do the vast majority  
7 of the living and dying there in Yemen. And they're the people  
8 who it's, you know, most helpful to talk to. And they're also  
9 the people I found to be some of my closest friends several  
10:32 10 years on, yes.

11 Q. In addition to the military, have you interviewed or  
12 interacted with people who are former fighters?

13 A. Yes. I've spoken with people who fought in Afghanistan  
14 back in the 1980s, people who had been former members of  
15 al Qa'ida and so forth, yes.

16 Q. How important is it to the study of Yemen and,  
17 particularly, what's going on there with al Qa'ida, to make  
18 this range of connections to people who are in Yemen and whom  
19 you can speak to when you're in Yemen in their language?

10:32 20 A. It's -- I mean, it's critical. Again, there's just no  
21 substitute for this. You can't -- in my opinion it would be  
22 irresponsible to claim to be able to speak about Yemen without  
23 going there, without talking with some of the people, without  
24 having a very good understanding of what's going on. And it's  
25 something that not only within Yemen, but outside of Yemen,

1 people would not respect.

2 And so one of the things that I'm proudest of, or that at  
3 least if you'll permit me a little bit of vanity, when -- is  
4 when Yemenis --

5 Q. It won't be the first time in this trial.

6 (Laughter.)

7 A. -- is when Yemenis ask my opinion about what's happening  
8 in the country, or when a Yemeni newspaper asks to interview me  
9 about my research in Arabic or so forth, and that, I think, at  
10:33 10 least for me as an academic who studies the country, tells me  
11 that I'm sort of on the right track. Yes, I don't understand  
12 everything about this country, but the Yemenis themselves are  
13 willing to have a discussion with me about what's happening  
14 about contemporary politics, about al Qa'ida. And all of that  
15 has been -- that back-and-forth has been just incredible.

16 And there's no way to do that -- given sort of internet  
17 penetration into Yemen, the spotty cell phone service and so  
18 forth, there's no way to do that from, say, Princeton, New  
19 Jersey, to Sana'a, Yemen. You actually have to be on the  
10:34 20 ground there to make these relationships. And these are -- I  
21 mean, these are individuals; they're people. And so you need  
22 to have a personal relationship with these individuals. You  
23 need to develop this over time, which at least for me, is why  
24 it's so, I think, important that I've been to Yemen several  
25 times. Because I've been able to develop personal

1 relationships with these individuals.

2 And there's a level of trust that goes along with that.  
3 They've seen the things that I write. They know what it is  
4 that I do. And so I think they're willing to open up to me in  
5 a way that they weren't willing to open up with me, say, the  
6 first time that I met them or the first time that I sat down  
7 with them. And getting people's true feelings and their deeper  
8 feelings, again, in the work that I do, I mean, there's  
9 just -- you either have that or you sort of guess at it. And  
10:35 10 if you guess at it, you can get into all sorts of mistaken  
11 assumptions.

12 Q. How far is Princeton from Manhattan?

13 A. It's -- well, I only know on the train. It's about an  
14 hour and ten minutes on the train.

15 Q. What reading material have you focused on since the year  
16 2000 to keep up to date with events in Yemen?

17 A. Sure. There's been a variety of books, academic books,  
18 that have been published on Yemen, a few more popular books,  
19 Edmund Hull, the former ambassador to Yemen who was there right  
10:35 20 after 2001-2003, has a new memoir out. There's a variety of  
21 newspaper articles that I keep up with sort of in the English  
22 language. But the vast majority of material that I rely on,  
23 and this is why I sort of -- I guess this gives you a peek into  
24 my daily life.

25 When I wake up, and with my coffee in the morning, usually

1 what I'll do is go on the internet and read through a variety  
2 of the Yemeni newspapers in Arabic. So that is something that,  
3 again, for someone like myself who spends all of their time  
4 thinking and working on Yemen, that's something that I just  
5 have to do. It's one of the things that you have to keep up  
6 with. And so I read -- I go through those Yemeni newspapers.  
7 And I will often spend -- because I spend a lot of time on  
8 al Qa'ida in Yemen, I'll also often go to some of the chat  
9 forums, the Islamic forums, to see if al Qa'ida in Yemen has  
10:36 10 released a new video, for instance, which yesterday they just  
11 released a new video.

12 Q. Mr. Johnsen, I'd like you to focus on the period of 1990  
13 to 2001. I know you could probably speak until one o'clock on  
14 the subject of what was Yemen like during this period, but I'd  
15 like you to take no more than four minutes to give the jury an  
16 overview. And I'll be watching the clock.

17 A. Yeah, this will be tough. Yeah.

18 (Laughter.)

19 Q. I know. Four minutes to talk -- to give them the best  
10:37 20 overview of the country of Yemen you can, beginning now.

21 A. Now? Wow. Okay. I'll try. Yemen is an incredibly  
22 diverse place, both geographically and as far as the people go.  
23 It's very, very poor. And many of the roads still aren't  
24 paved. When you get outside of Sana'a it feels like you're  
25 going back in time. It's just incredible what you see.

1           You see a lot of guns. People are always carrying guns.  
2           Poverty is very, very apparent there. Many times the water  
3           pipes don't work. Electricity is nonexistent in many places,  
4           and the places where it does work, people often have to do  
5           without.

6           On the political front, in 1990 North Yemen and South  
7           Yemen unified. And this was a former socialist country and a  
8           very tribal country. That unification did not go very well.  
9           In 1994 there was a civil war. The state threatened to break  
10:38 10          apart. The north was victorious and -- how am I doing, okay?  
11          Okay -- and unity was preserved.

12          We all know that there was the USS Cole attack, an  
13          al Qa'ida attack, in 2000, and then the September 11th attacks  
14          in 2001. I think I did three minutes.

15          Q. Could you describe typical clothing worn?

16          A. Right. So it differs depending on where you are in the  
17          country. But the traditional dress is sort of a long robe with  
18          a jacket thrown over this. And often -- they're jackets sort  
19          of like the one I'm wearing now, and they can be in a wide  
10:38 20          variety of styles, from things like this to houndstooth. Lots  
21          of people wear camouflage jackets thrown over their robes.  
22          There are places where they wear what's known as a futah, which  
23          is sort of this towel that's wrapped around, almost like a  
24          skirt, that you see a lot of different Yemenis wearing.

25          In the north, one of the things that you notice that's

1 very distinctive is they'll have this large curved dagger known  
2 as a jambiya that's stuck in their belt, and you have a very,  
3 very wide belt. And this is something --

4 Q. Kind of like Raiders of the Lost Ark?

5 A. Oh, a little bit, yeah.

6 And so there's that dagger, and then you also have -- and  
7 that sort of differentiates, in most cases, northern tribesmen  
8 from southerners, but one of the things that's almost a  
9 constant across the country is how many people carry guns, own  
10:39 10 guns. Gun ownership is just sort of a way of life which  
11 also -- the first time I got there -- really jumped out to me.  
12 I was like, wow, you know, even from Nebraska, I mean, still  
13 having this many guns, and how many of my friends own multiple  
14 guns, was a bit shocking to me.

15 Q. What type of guns will people just walk around with?

16 A. You'll often see people walking around with AK-47s, with  
17 different machine guns. There's a great quote from 2002 when a  
18 former prime minister Abdul Karim al-Eryani, who's an  
19 individual I know personally, he actually -- he did his Ph.D.  
10:40 20 at Yale back in the '60s, went back to Yemen. He's one of sort  
21 of the old wise men of Yemeni politics. And he talks about the  
22 difference in weaponry between what the government has and what  
23 the -- and what Yemenis have.

24 And so he -- the quote was, and I'm paraphrasing, you  
25 know, What do you have as a tribal shaykh? You know, you have

1 a lot of machine guns, you might have some RPGs, maybe you have  
2 a tank in your front yard. But the government we have -- we  
3 have planes.

4 And I think this really gets at what Yemen is like. You  
5 know, you do have places -- I mean, the government has  
6 attempted to get some of the tribal shaykhs to turn in things  
7 like the tanks in their front yard, and when I was there in  
8 2004 I believe a shaykh actually did turn his back in. But  
9 it's a place where the amount and the type of weapons is, for  
10:41 10 an American like myself -- and I've been in Cairo and I've been  
11 in Jordan, but it's so much different in Yemen. It's quite  
12 astounding.

13 Q. I'd like to focus on the period exclusively from 1990  
14 until 9/11 --

15 A. Okay.

16 Q. -- in 2001.

17 Did al Qa'ida have a presence in Yemen during this time?

18 A. Yes. So in 1990 Osama bin Laden was in Saudi Arabia. And  
19 he worked with Yemenis to set up training camps across the  
10:41 20 country, in the north and so forth. What he wanted to do is  
21 what they did in Afghanistan. In Afghanistan, the Arab  
22 fighters were really focused on defeating the Soviet Union, and  
23 bin Laden saw the socialists in South Yemen as the same thing.

24 So al Qa'ida set up some camps, some networks. These  
25 were -- I mean, there wasn't a great structure because this was

1 just in the beginning phases of al Qa'ida. Bin Laden wasn't  
2 present in Yemen; he was in Saudi and then in Sudan. But there  
3 certainly was an active presence.

4 And the first al Qa'ida attack took place in Aden. It's  
5 the southern port city of Yemen. So way in the south in 1992.  
6 After the civil war in '94 there were some al Qa'ida fighters  
7 that helped the president, President Ali Abdullah Salih,  
8 preserve union, not because they necessarily agreed with him  
9 but because the President Abdullah Salih and al Qa'ida and  
10:42 10 other Islamists all had the same enemy, and that was the  
11 socialists. So you saw this sort of wide alliance of forces  
12 fighting them.

13 After that, once Salih had won, he needed their services a  
14 little bit less, and so there was not really a falling-out, but  
15 sort of a tacit nonaggression pact for a while. There was the  
16 USS Cole attack, as we mentioned, in 2000, and then September  
17 11th which really sort of changed things in Yemen, obviously,  
18 as it changed things around the world.

19 Q. The president of Yemen in 1990 was Salih?

10:43 20 A. Yes.

21 Q. Can you spell his name for me?

22 MR. CARNEY: And, your Honor, may I use the ELMO,  
23 please?

24 Q. Could you spell it for me, please? Just the last name?

25 A. Just the last name? The last name, Salih, is spelled



1 S-A-L-I-H. You'll often see it spelled with an E instead of an  
2 I. Individuals like myself, academics, there's a particular  
3 way to transliterate Arabic, so we represent it with an I.

4 Q. Is it spelled correctly there?

5 A. Yes, it is.

6 Q. Okay. How long was President Salih in office as president  
7 of Yemen?

8 A. So President Salih first came to office in North Yemen,  
9 before unification, in 1978. And so he has been president from  
10:44 10 1978 up to unification. And then when unification happened, he  
11 remained president, head of technically what was the  
12 presidential council, through the civil war, through September  
13 11th. And, in fact, he just technically signed an agreement a  
14 few weeks ago that said that he would step down. So he's been  
15 president from 1978 to 2011. It remains to be seen whether  
16 he's actually gone or not.

17 Q. How would you describe the relationship between al Qa'ida  
18 and the president of Yemen up until 2001?

19 A. Right. This -- how I've described it and how I would  
10:44 20 continue to describe it is really sort of a tacit nonaggression  
21 pact. Yemen is a fairly wild place; the central government  
22 doesn't have complete control over some of the areas.

23 Al Qa'ida was one group that was operating there. Yemen had  
24 allowed many of these fighters to come back after Afghanistan,  
25 not because it necessarily liked the fighters, but because the

1 enemy of its enemy was its friend, and so since Salih was  
2 opposed to the socialists, al Qa'ida was opposed to the  
3 socialists, then Ali Abdullah Salih was able to manipulate and  
4 use Islamist fighters against the socialists.

5 Q. Did President Salih prior to 9/11/2001 permit al Qa'ida to  
6 have training camps in Yemen?

7 A. "Permit" is -- I mean, he didn't crack down on the  
8 training camps. But as president of Yemen, he only had sort of  
9 so much political capital. And to use it on something like  
10:45 10 al Qa'ida as opposed to the tribes which are really the support  
11 base that the president is relying on would have, at least at  
12 that time, and up to about the Cole -- and there were still  
13 some issues I think between the Cole and then between September  
14 11th -- yeah, the president sort of -- I mean, he just ignored  
15 them, used them when he could. But it wasn't a major focus.  
16 It wasn't something that he spent a lot of his time thinking  
17 about.

18 Q. Did things change in Yemen between President Salih and  
19 al Qa'ida after 9/11?

10:46 20 A. Yeah, absolutely. A little bit of background might be  
21 helpful, if I'm permitted. Just a little bit.

22 So in 1990 Yemen was on the U.N. Security Council. They  
23 voted against the authorization of the use of force in Iraq.  
24 And that hurt Yemen very, very badly. About a million workers  
25 were expelled from Saudi Arabia, the Yemeni rial, the currency

1 there, just collapsed overnight. And so Yemen's economy really  
2 took a beating.

3 And so when September 11th happened, President Salih was  
4 very much aware of the last time that he had crossed the United  
5 States. And so he really, really wanted to make sure that  
6 Yemen was on the right side of this war. Essentially, what  
7 then-President Bush had said, "You're either with us or against  
8 us." And President Salih worked in a variety of different ways  
9 to make sure that President Bush and the U.S. knew that Salih  
10:47 10 was with him. That was really -- as former ambassadors to  
11 Yemen have said, that moment was the game changer for President  
12 Salih.

13 Q. Did President Salih travel to the United States in 2001?

14 A. Yes, he did. So he had his --

15 Q. What month was that?

16 A. That was in November of 2001.

17 Q. Of course, two months after the attack?

18 A. Right. That was the earliest that he could get a meeting.  
19 He'd had a number of different people working on trying to get  
10:47 20 him a meeting as soon as possible.

21 Q. Did he meet with President Bush?

22 A. Yes, he did.

23 Q. After that meeting with President Bush, did President  
24 Salih announce a commitment that he would make regarding Yemen  
25 and al Qa'ida?

1 A. Absolutely. He was very clear that his intentions were to  
2 eradicate the organization within Yemen. He knew that if he  
3 didn't do it, the United States was going to do it. So he was  
4 absolutely clear on that point.

5 Q. Was President Salih given specific information by U.S.  
6 intelligence?

7 A. Yeah. He was given the names of leaders within the  
8 organization there in Yemen to go after.

9 Q. What actions were taken by President Salih after his  
10:48 10 meeting with President Bush?

11 A. Right. So very shortly after he got back to Yemen, one of  
12 the first things that the president did was order a series of  
13 raids across the country, one out in Ma'rib, which is in the  
14 center part of the country; some others in Shabwa and Abyan,  
15 which are in the south, but very mountainous, very difficult  
16 terrain. And these were to go after exactly the leaders that  
17 the U.S. had told him were active within al Qa'ida in Yemen.

18 Q. Were any arrests made?

19 A. No. These -- the raids did not go well. So in Shabwa,  
10:49 20 the target -- the leader of al Qa'ida in Yemen wasn't home when  
21 they showed up. In Ma'rib, in the Village of al-Husn, the two  
22 individuals that Yemen was after, there was a fight between the  
23 tribesmen who were giving them refuge and the Yemeni military,  
24 and in the midst of the fight the two al Qa'ida suspects sort  
25 of escaped out the back.

1 Q. Did President Salih then authorize his government to  
2 cooperate with American drone strikes?

3 A. Yeah. What we saw was --

4 Q. Can you first tell us what is meant by a "drone strike"?

5 A. Right. A drone is often also referred to as an unmanned  
6 aerial vehicle. So some sort of vehicle that can fly in the  
7 sky. Many times they're weaponized. They have missiles that  
8 can be remote-controlled to carry out a strike.

9 President Salih -- after the failure of the December raids  
10:50 10 there was increased cooperation with the U.S. that eventually  
11 led up, in November of 2002, to a U.S. drone strike that killed  
12 the leader of al Qa'ida, a man named Abu Ali al-Harithi.

13 Q. What was the impact on al Qa'ida in Yemen by President  
14 Salih in November 2001 beginning with the steps of raids,  
15 attempted arrests and cooperating with drone strikes?

16 A. Right. So it put al Qa'ida and Yemen in a position they'd  
17 never been in before. So up until September 2001, this is an  
18 organization that had been able to move around the country very  
19 freely. They didn't really have to worry about their personal  
10:50 20 safety. There had been some -- a series of arrests after the  
21 USS Cole. But September 11th was really the moment that that  
22 all changed, and they went from an organization that had a  
23 refuge, or what one ambassador has termed as a warehousing  
24 factory in Yemen, a place they could always go and stay, to a  
25 place where they were constantly harassed and on the run.

1 Q. Mr. Johnsen, based on your study, your experience, your  
2 presence in Yemen and all of these factors that you've related  
3 to us up to now, is there any evidence that you know of that  
4 any training camps were being operated by al Qa'ida after 2001  
5 and until 2006?

6 A. No, there's not.

7 Q. Were other al Qa'ida people, in addition to the person  
8 you've mentioned, killed by drone attacks or captured?

9 A. Yes. So along with the head of al Qa'ida in Yemen who was  
10:51 10 killed in that November 2002 strike, there were other  
11 individuals in the car who were killed with him as well; there  
12 were other al Qa'ida fighters who were killed in Yemeni  
13 government raids; the Yemeni government was able to arrest a  
14 number of the leaders of al Qa'ida. There was just a massive  
15 campaign throughout Yemen where a number of people ended up  
16 either killed or imprisoned.

17 Q. Was al Qa'ida totally eliminated in Yemen?

18 A. So the November 2002 strike really broke the back of  
19 al Qa'ida. They had been on the run up to that point. That  
10:52 20 was the strike -- it was a decapitation strike. It killed  
21 their leader and they didn't know what to do after that. They  
22 had been struggling to reorganize even when he was in charge.  
23 And now with him dead, the organization really just crumbled.

24 Q. Was there a particular prison in Yemen where al Qa'ida  
25 members who were arrested were kept?

1 A. Yes. I mean, there were several prisons. There was one  
2 major one in Sana'a. It's known as the Political Security  
3 Organization Prison. It's on the outskirts of Sana'a. It's  
4 almost -- I have described it before, think of like a Star  
5 Trek-like battleship, and it has that sort of long, cylindrical  
6 center and then a couple of angled wings that spread out from  
7 it. And this is one of the major prisons in Sana'a where some  
8 Al Qa'ida prisoners were kept.

9 Q. In February of 2006 did something happen in regard to that  
10:53 10 prison?

11 A. Yeah. In February of 2006 there was a prison break in  
12 which 23 al Qa'ida suspects tunneled out of their cell. And  
13 what happened was that Yemen had continued to arrest a lot of  
14 people and so there was prison overcrowding. So these people  
15 had been moved from that main wing that I talked about, that  
16 sort of Star Trek battleship, all the way over to the edge, to  
17 the wall, into sort of a temporary prison.

18 And they were able to tunnel out of there into a  
19 neighboring mosque where they said their morning prayers and  
10:54 20 then walked out the front door to freedom. And this is the  
21 moment where al Qa'ida in Yemen really returned. This is sort  
22 of their up from the ashes; their resurrecting themselves was  
23 this moment in February of 2006.

24 Q. Was there an identified leader of al Qa'ida within the  
25 prison?

1 A. Yes, there was. One of the major leaders was an  
2 individual named Nasir al-Wuhayshi.

3 Q. And who was he?

4 A. He was an individual who had been Osama bin Laden's  
5 secretary from 1998 all the way up through the Battle of Tora  
6 Bora in 2001. And this is a guy that we know from stuff in the  
7 narrative press, from people that were there in Afghanistan who  
8 have since talked about it. He was always next to bin Laden.  
9 So I tend to think of this as almost a master apprentice sort  
10 of relationship.

10:54

11 So after Tora Bora, Wuhayshi went to Iran, was arrested,  
12 extradited back to Yemen. And in prison he sort of rebuilt the  
13 network that had collapsed after al-Harethi's death. And this  
14 is a guy who implemented the blueprints that bin Laden used in  
15 Afghanistan in the late 19- -- in, excuse me, the 1990s. He  
16 implemented them in Yemen.

17 So it's this prison break from February 2006, and this  
18 guy, Nasir al-Wuhayshi's leadership, that has changed Yemen  
19 from what it was into the country that we're all worried about  
10:55 20 today with a very active al Qa'ida presence.

21 Q. So it's fair to say that al Qa'ida was now back in  
22 business?

23 A. Absolutely.

24 Q. What is the current status of al Qa'ida in Yemen today,  
25 2011?



1 A. It's -- for someone like myself, I think for many of the  
2 people in the U.S. government, and judging by my email and  
3 phone calls and invitations, they're incredibly worried about  
4 this. Al Qa'ida is an organization in Yemen that at the moment  
5 is gaining strength. Nasir al-Wuhayshi learned from the  
6 mistakes that they made back in Yemen from, you know, what  
7 happens if your leader is killed and the organization crumbles.  
8 He very much wanted to avoid the same fate this second time.

9 And so al Qa'ida in Yemen has grown from this prison break  
10:56 10 in 2006 to an organization that has proved itself capable of  
11 launching attacks on the U.S., both with the Christmas Day  
12 Bomber, as well as the parcel plots last year. And so it's a  
13 very worrying threat and a situation that, unfortunately, is  
14 getting much worse.

15 Q. Mr. Johnsen, I'd like to turn to a completely different  
16 subject concerning Yemen.

17 MR. CARNEY: With the Court's permission?

18 THE COURT: Well, we are about five minutes of eleven.  
19 Maybe it's an appropriate time, if you're changing topics, to  
10:56 20 take the morning recess.

21 MR. CARNEY: I have one more section that will go well  
22 beyond five minutes.

23 THE COURT: That's what I mean. Maybe we should take  
24 the break at this point.

25 MR. CARNEY: If your Honor thinks so, I agree.

1 THE COURT: All right. Yes. We'll take the morning  
2 recess.

3 THE CLERK: All rise for the Court and the jury.  
4 We'll take the morning recess.

5 (The Court and jury exit the courtroom and there is a  
6 recess in the proceedings at 10:57 a.m.)

7 (Court and jury in at 11:27 a.m.)

8 Q. Mr. Johnsen, I'd like to switch over to a different  
9 subject area concerning Yemen. Is Yemen noted for anything  
10 related to education?

11 A. Yes, absolutely, it is. It's particularly noted for the  
12 register of Arabic that's spoken there. And so, quite often,  
13 professors in American universities will advise their students  
14 who were studying Arabic, or who are studying Arabic, to travel  
15 to Yemen. And there's a couple of reasons for this. One, it's  
16 closer to the classical Arabic that many people study.

17 At the same time -- and I've lived for extensive periods  
18 in Cairo and in Jordan and in Yemen, and so I've been able to  
19 sort of compare and contrast the different places. One of the  
20 things that Yemen really has going for it as a place to study  
21 Arabic is that so few people there speaks English. So this  
22 allows you to really spend a lot of time practicing the  
23 language. And this has been recognized not only by people like  
24 myself and by the professors but also, for instance, say, the  
25 State Department.

1           So the Critical Languages Program that I was sort of  
2   chaperoning, coordinating on the ground in Yemen, those were  
3   for intermediate and advanced students, as opposed to the other  
4   Arab countries which many of them sent beginner students. So  
5   they recognized Yemen, as within the Arabic-speaking world, a  
6   unique space to go to study and a place that really, if you  
7   have some Arabic knowledge, some proficiency, this is where you  
8   want to go to really try to advance as far as you can.

9           In addition to the Arabic, it's also known as a place to  
11:29 10   go to study with particular shaykhs, particularly for many  
11   Muslims students from around the world often will travel to  
12   Yemen to study at some of the different institutes and schools  
13   there.

14   Q.   Do these schools have any focus on Islamic law or  
15   jurisprudence?

16   A.   Yes, many of them do. Many of the schools will focus on  
17   Hadith, as we heard about earlier. Many will focus on Islamic  
18   law. Many will focus on jurisprudence. I mean, the history of  
19   Islamic education and the number of topics in which to study to  
11:30 20   continue to advance your knowledge of Islam is really quite  
21   extensive. And people in Yemen have been studying these for a  
22   number of different years -- excuse me, for quite awhile, and  
23   there are a number of different shaykhs who are well respected  
24   the world around for their particular specialty.

25           And so it's -- I mean, in some ways it's similar to what I

1 did as a student. I went to a particular place because of the  
2 professor that was there who worked on what it is that I worked  
3 on. And you see the same thing in Yemen. You see students  
4 going there to check it out, to work with the professor, or the  
5 shaykh in this case, who's a specialist in what it is that they  
6 want to learn.

7 Q. Is there any advantage to someone who wants to focus on  
8 the Qur'an or Hadiths or statements of scholars from hundreds  
9 of years ago to attend a school that teaches this type of  
10 classical Arabic?

11 A. Yeah, absolutely. This type of Arabic is much different  
12 from what's spoken on the street, much different than what's  
13 printed in the newspapers. And you really do need years of  
14 technical training to acquire a proficiency in this. These are  
15 things that, in our courses at Princeton -- in Princeton, for  
16 instance, we work on, you know, some difficult texts from the  
17 11th and 12th centuries. And these take a long time to go  
18 through, and they take a long time to parse.

19 You really need that sort of specialized knowledge, and  
11:32 20 you need to be in a place where you can have access to that on  
21 not just entering into a classroom and sitting and getting it  
22 for a couple of hours but living in that situation. And I  
23 think that's a major factor as well.

24 Q. How rigorous is the teaching offered at the schools you're  
25 describing?

1 A. Well, it depends on the school. These are not -- it's not  
2 sort of set up in the institutional structure that we think of  
3 here in the United States. So it varies a great deal from  
4 place to place. And often you really have to be on the ground  
5 to sort of see what any particular school offers, to see what  
6 the shaykh there is teaching, how regimented, how rigorous it  
7 is.

8 Q. Are these schools located in different parts of the  
9 country?

11:32 10 A. Yeah. There are schools and institutes all over the  
11 country of Yemen. And Yemen is quite expensive. I took a bus  
12 trip from the capital city, which is -- you know, it's sort of  
13 in the western section, in the north, but more to the central.  
14 And I traveled all the way to Hadramawt, and that was a very  
15 extensive bus ride. It was like 15 hours or something to get  
16 there. So there's a travel that's required to go from place to  
17 place, but they're located in every corner of the country.

18 Q. Are you familiar with the Arabic word "mu'skir"?

19 A. I am, yes.

11:33 20 Q. Can you pronounce it, please?

21 A. Mu'skir.

22 Q. What is the colloquial meaning of mu'skir?

23 A. This is a very flexible term that's used in a lot of  
24 different ways. So it can be used to describe, say, a military  
25 camp. For instance, the First Armored Division has a camp in

1 Sanaa, right above Sanaa University, in Yemen, obviously. This  
2 is referred to as mu'skir. Also, I've had friends from church  
3 in the Middle East who refer to, like, a vacation bible school  
4 in the desert as mu'skir. So it's one of those words that,  
5 when used in common speech, becomes quite flexible, like many  
6 of the words that we have in English.

7 Q. Are people who are not from Yemen allowed to attend these  
8 schools?

9 A. Yes. In fact, many of the students at different schools  
10 are from countries from around the world.

11 Q. Who funds the schools?

12 A. Well, I mean, this is something that, again, really  
13 depends on the school that you're talking about. And so you  
14 can't really generalize. You have to -- again, we think of it  
15 -- like, say I wanted to attend Princeton. I get on the  
16 internet and sort of look that up. That's really not something  
17 you can do for many of these schools in Yemen. You actually  
18 have to be on the ground to find out what's happening.

19 Q. Are the schools different from school to school?

11:34 20 A. Absolutely.

21 Q. The faculty, philosophy, coursework, accommodations?

22 A. Yeah. There's a wide range of these schools. And, again,  
23 it depends on what the -- what the particular shaykh is at any  
24 of these schools and what it is that he's doing. And the  
25 school really takes on the impression of that individual in

1 most cases.

2 Q. I'd like to ask you about three schools in particular,  
3 please. Are you familiar with Dar al-Mustafa?

4 A. Yes, I am.

5 Q. Could you spell it, please?

6 A. Yes. Transliterated -- I assume English, right?

7 Q. Yes.

8 A. Sorry.

9 Q. Let's try it in Arabic. I can't even say the Arabic.

11:35 10 A. So the first word, D-a-r, and then a space; the second  
11 word, a-l, hyphen, M-u-s-t-a-f-a. Dar al-Mustafa.

12 Q. There's an "A" on the end?

13 A. Right, yeah.

14 Q. And are you familiar with Dar al-Hadith?

15 A. There are a few Dar al-Hadiths.

16 Q. Are you familiar with one in Ma'rib?

17 A. In Ma'rib, yes, I am.

18 Q. How do you spell that, please?

19 A. Again, the first word is the same, Dar, D-a-r; second  
11:36 20 word, a-l, hyphen; H-a-d-i-t-h, Dar al-Hadith.

21 Q. And Ma'rib is spelled what, please?

22 A. It's usually transliterated as M-a-r-i-b.

23 Q. Are you familiar also with a third school, Dar al-Hadith,  
24 in Dammaj?

25 A. Yes, I am.

1 Q. How do you spell Dammaj?

2 A. Dammaj is transliterated D-a-m-m-a-j.

3 Q. Where is Dar al-Mustafa located?

4 A. This is in the city of Tarim, which is in the east of the  
5 country, out in Hadramawt.

6 Q. What is the approximate size of this school to the best of  
7 your knowledge?

8 A. Are you talking student population or geographical  
9 location?

11:37 10 Q. Students.

11 A. Students, it's -- this varies widely from time to time  
12 depending on the number of students that are there. I've  
13 visited the school. I've spent time in the library, talked to  
14 the director. For instance, when I was a Fulbright fellow  
15 there, one of the Fulbright students was actually taking  
16 courses at the school.

17 So the students, I would say, at least from the time that  
18 I was there, which was in 2003, 2004, there were a few hundred  
19 students. But, you know, many of them go out; they come back,  
11:37 20 and so it's really hard to get any sort of a firm count.

21 Q. Do the schools adopt a philosophy that reflects the  
22 thinking of its leader?

23 A. Yes, in this case, absolutely.

24 Q. In 2003 and 2004, are you aware of who the leader was or  
25 the -- I don't know what term you would call him -- at Dar



1 al-Mustafa?

2 A. Yeah. I had a conversation with him. My mind is blanking  
3 on the name, but I remember talking with him, yeah.

4 Q. What was his philosophy in terms of running the school?

5 A. Well, I mean, mostly he -- one of the things that he  
6 really wanted to do is -- he had students from around the  
7 world, and so he wanted to advance knowledge. There's a saying  
8 within Islam that many of the students -- that you often hear.

9 It says, "Seek knowledge even unto China." This is something  
11:38 10 that a lot of students take very, very seriously, and the  
11 director of the school did as well. And so I mean the vast  
12 majority of their time is spent on sort of these traditional  
13 topics of Islamic education.

14 Q. What was the school's reputation for teaching classical  
15 Arabic and teaching Islamic law and jurisprudence in February  
16 of 2004?

17 A. It had a very good reputation. Again, this is a place  
18 where one of the -- Yemen is not a place where a lot of  
19 Fulbright fellows go. So 2003, 2004, when I was there, there  
11:39 20 were three of us. And one of the females, who was Muslim, was  
21 taking courses there. And she did that because she felt this  
22 was one of the best places to go to study her religious  
23 heritage as well as to improve her Arabic.

24 Q. To your knowledge, did this school have any connection  
25 with al Qa'ida?

1 A. No. In fact, this is a school that al Qa'ida has called  
2 out by name as a school that's diametrically opposed to the  
3 political goals of al Qa'ida. There's some documents that al  
4 Qa'ida put out that refer to the school in a very unflattering  
5 way.

6 Q. Let's talk about the second school, Dar al-Hadith, in  
7 Ma'rib.

8 A. Right.

9 Q. Are you familiar with that school?

11:40 10 A. Yes, I am.

11 Q. Could you tell us where that is located and what the  
12 student body is in terms of the numbers?

13 A. Right. This is a school that's located out in Ma'rib,  
14 which is a very -- it's a desert-type area. And so it's -- I  
15 mean, "school" is a little misleading, right? Because we think  
16 of sort of a centralized place with maybe a couple of wings for  
17 classrooms.

18 And this is -- these type of schools are much different.  
19 They have a variety of different, you know, mud structures and  
11:40 20 so forth. They're very rudimentary to -- for someone coming  
21 from the West or from an American background.

22 As to the number of students, this, again, fluctuates a  
23 great deal. But this is something where the students there  
24 were attracted by the leader, an individual often referred to  
25 as Abul Hasan al-Ma'ribi. He's actually an Egyptian.

1 Q. What was his philosophy in running Dar al-Hadith in  
2 Ma'rib?

3 A. Right. So he's someone who's often referred to as a  
4 Salafi, which is a word that's come up a great deal. But he  
5 adheres to a type of Salafism that isn't Salafi-Jihadi.

6 And so this is a school that is, again, not affiliated  
7 with al Qa'ida. It's a school of sort of -- at least it's a  
8 school that practices and that often teaches political  
9 passivism within Yemen, not getting involved in politics, not  
10 taking a stand, things of that nature.

11 Although this is slight -- this started to change slightly  
12 in 2006 when the leader got involved in the Yemeni presidential  
13 elections. But that was a major break, this 2006 instance  
14 where he endorsed President Ali Abdel al-Salih for re-election.

15 Q. Is this another school that has an outstanding reputation  
16 for teaching classical Arabic and Islamic law and  
17 jurisprudence?

18 A. Yeah. Many of the students, like its name suggests, Dar  
19 al-Hadith -- and I know that Hadith has come up previously in  
20 this, sayings of the Prophet Muhammad. This is a place that  
21 really focuses on that and on teaching Arabic. And, again,  
22 this is a very particular register of Arabic that you need  
23 training in. And, yes, this place has an international  
24 reputation.

25 Q. The third school I'd like to ask you about is Dar

1 al-Hadith in Dammaj. Could you describe where that's located  
2 and the approximate size of the student body?

3 A. Right. So if we're following along sort of from the  
4 map --

5 MR. CARNEY: Can we have the map put on display,  
6 please, your Honor? I believe it's ready to go.

7 A. Right. So if you look in Tarim, out in sort of the  
8 eastern part. It's tough to see, but it's in the middle out in  
9 sort of the panhandle. And then you go all the way back where  
10 the little notch comes up. And just to the left of that is  
11 Ma'rib. That's where the second school is. Then if you go all  
12 the way up to the northwest corner, you see Sa'ada, and that's  
13 where the third school is located, in a village outside of  
14 Sa'ada.

15 Q. If I can --

16 A. So you have sort of -- if you're going by the map, you go  
17 from the east all the way to the northwest corner in sort of a  
18 -- well, I guess like a little tour across the country, if you  
19 will.

11:43 20 Q. Have I circled Ma'rib and Sa'ada?

21 A. Yeah. And Tarim is to the right on the map, in the east.  
22 Right, exactly there, yeah. So those are the general locations  
23 that we're talking about.

24 Q. And that third school at Dammaj, does that also have an  
25 international reputation for classical Arabic and Islamic law

1 and jurisprudence?

2 A. Yes. This is a place that attracts students from --  
3 again, from all over the world and particularly from the  
4 Islamic world, that students go there to study, obviously.

5 Q. Finally, based on your experience, your knowledge, your  
6 dealing with the people and attendance at these schools, do any  
7 of these three schools have a reputation for being a feeder  
8 source for al Qa'ida, whether in Yemen or elsewhere?

9 A. Right. So, for instance, the guy who runs the school --  
11:44 10 or who ran -- he passed away in July of 2001 -- an individual  
11 named Shaykh Muqbil al-Wadi. He ran the school in Dammaj. And  
12 he would say -- in fact, I'm paraphrasing the quote, but  
13 essentially he said, Of all the people in the world, Osama bin  
14 Laden is the one I can never forgive. He was someone who had a  
15 great deal of animosity towards different Islamic sects, and he  
16 was diametrically opposed to Osama bin Laden.

17 Q. Thank you, Mr. Johnsen.

18 MR. CARNEY: Your Honor, I pass the witness.

19 CROSS-EXAMINATION BY MR. GROHARING:

11:45 20 Q. Good morning, sir.

21 A. Morning.

22 Q. Now, you testified that there's been an increased interest  
23 in Yemen lately in the United States?

24 A. That's correct.

25 Q. And I believe you used the term "burst into the national

1 consciousness"?

2 A. Yes, I did.

3 Q. And that was after the attack of the -- who you described  
4 as the Underwear Bomber?

5 A. Yes, the Christmas Day bomber, on Christmas Day 2009.

6 Q. Who was that?

7 A. This is an individual named Omar Farooq Abdul Mutallab.

8 Q. And there's actually been a lot of interest in Yemen by  
9 the United States and, in particular, al Qa'ida's presence in  
10 Yemen for a number of years?

11 A. This is interest that waxes and wanes.

12 Q. Okay. There has been an interest for a number of years,  
13 correct?

14 A. I mean, again, it waxes and wanes. At times, there's a  
15 lot of interest. At other times, there's no interest at all.

16 Q. There's been a time when there's been no interest at all  
17 from --

18 A. Very little interest, yes.

19 Q. We'll get to that a little bit later.

11:46 20 A. Okay.

21 Q. Now, as far as your briefing people regarding Yemen, you  
22 weren't doing that in 2003, 2004, right? That's something  
23 that's been more recent based on your continued experience  
24 there?

25 A. Right. I would say that --

1 Q. Just yes or no. It's been more recent, correct?

2 A. Yes. Sorry.

3 Q. And when you were there in 2003 and 2004, you were  
4 studying, correct?

5 A. I was carrying out research.

6 Q. And that research was into the Civil War in Yemen?

7 A. That's correct.

8 Q. You weren't researching al Qa'ida as an organization,  
9 correct?

11:47 10 A. No. I was doing that as well.

11 Q. What was the topic of the research you were working on for  
12 your fellowship?

13 A. Right. The topic of the Fulbright Fellowship was: The  
14 Yemeni Civil War, 1962 to 1970, in Popular Consciousness, I  
15 believe.

16 Q. Okay. It wasn't al Qa'ida's presence in Yemen or the  
17 history of al Qa'ida or anything?

18 A. I was writing articles about that as well.

19 Q. You were writing articles.

11:47 20 Now, in that capacity, I believe you indicated that you  
21 spent most of your time in Sanaa?

22 A. I was based in Sanaa, but I did a great deal of traveling.

23 Q. How much time did you spend in Ma'rib?

24 A. In Ma'rib, I was there, I think, on four different  
25 occasions for a period of, I don't know, four to five days on

1 those four different occasions. I mean, total, four to five  
2 days.

3 Q. You talked about Yemen. And I believe you said certain  
4 parts of Yemen are -- I think you described them as a wild  
5 place with no government control?

6 A. I wouldn't say no government control or I don't believe I  
7 said that. I would say the central government has little  
8 control in some of these places.

9 Q. Well, some of the tribal leaders had tanks, right?

11:48 10 A. Yes.

11 Q. Their own tanks?

12 A. Yes.

13 Q. Okay. And, obviously, they had a lot of weapons as well?

14 A. That's correct.

15 Q. They decided what happened in their lands, correct?

16 A. I think that's a little too simple. I would say that the  
17 tribes felt pressure from the government. The government felt  
18 pressure from the tribes. And it's a very dynamic situation.  
19 There's interaction back and forth. The government tries to  
11:49 20 influence the tribes. The tribes press back against the  
21 government. So it's not sort of the simple thing: President  
22 Salih says something. It takes place.

23 Q. Well, fair to say, prior to September 11, 2001, there was  
24 very little pressure put on the tribes to remove al Qa'ida or  
25 to crack down on the presence of members of al Qa'ida in



1 certain locations, correct?

2 A. In certain locations, I think that's -- generally  
3 speaking, yes.

4 Q. Fair to say President Salih has not been a long-time  
5 friend of the United States and supported the United States,  
6 correct?

7 A. He's had a difficult relationship with the U.S., yes.  
8 There's been times where he's been quite close and times where  
9 he's been very much on the outside looking in.

11:49 10 Q. And his interests very much revolves around his  
11 perseverance as well as the United States support to Yemen, is  
12 that fair?

13 A. I think, yeah. His interest is in maintaining power or  
14 has been up until very recently.

15 Q. It doesn't have anything to do with him agreeing with  
16 democracy or principles espoused in the United States, correct.

17 A. Not necessarily. He's one who wants to maintain power  
18 however that's possible.

19 Q. Fair to say he does what's good for President Salih?

11:50 20 A. Yes, I think that's fair to say.

21 Q. At times, it was good for him to cooperate with the United  
22 States, correct? He felt it was good for him to cooperate with  
23 the United States at times?

24 A. Yeah. You're talking -- I guess I would like to have sort  
25 of a chronological date to pin this to since it's been so much

1 back and forth.

2 Q. Well, I think you're making my point. At times, he would  
3 cooperate with the United States throughout his tenure, right?

4 A. Yeah. There have been times where what I would call game  
5 changers happen that changed his calculation.

6 Q. And at times he would not want to cooperate with the  
7 United States?

8 A. I don't believe there have been many of those times since  
9 September 11th.

11:50 10 Q. Okay. We'll go through those periods in detail in a bit.

11 A. Okay.

12 MR. GROHARING: Can you please pull up Exhibit 690?

13 Q. Are you familiar with internet chats?

14 A. Like instant message?

15 Q. Correct.

16 A. Yeah. I'm familiar with them.

17 Q. I would just like -- can you tell if this is a chat that  
18 took place on March 30 of 2006?

19 A. That's what it says on the screen.

11:51 20 Q. And the email addresses are ibnul\_khattab82@yahoo.com and  
21 then a person named Mu'awiyah?

22 A. Mu'awiyah, yeah, that's what I read as well.

23 MR. GROHARING: Can you go to Page 3, please?

24 Q. Okay. I'll read the portions that are attributed to  
25 Mu'awiyah and if you could read the portions that are in

1 Arabic, there.

2 A. You mean the Arabic name, Al-Fiqir ila Allah? You just  
3 want me to read those portions, the English?

4 Q. The English text after the Arabic name you just mentioned,  
5 starting with, "Join the club."

6 A. I'm sorry. That one is a little cut off. Thank you.  
7 "Join the club, akhi brother."

8 Q. "Which club lol?"

9 A. "The 'I want to get out of here' club."

11:53 10 Q. "Brother, we are planning collective migration with some  
11 brothers here."

12 A. "To where?"

13 Q. "Yemen, Allah willing."

14 A. "Hehe."

15 Q. "There are some Yemeni brothers."

16 A. "Great."

17 Q. "From powerful tribes and of our creed."

18 A. I believe that should be "place." Can I read it as  
19 "place"?

11:53 20 Q. Sure.

21 A. "The place to go is Ma'rib. I was there."

22 Q. And now "Ma'rib," is that the Ma'rib you were referring to  
23 a few minutes ago?

24 A. I believe so, yes.

25 Q. "Lol. Yes, they are Ma'ribi."

1 A. "Years ago."

2 Q. "Wow. Tell me about it, brother."

3 A. "Heh. Where do I start?"

4 Q. "How is the place?"

5 MR. GROHARING: Next page, please.

6 A. "It's like."

7 Q. "And the people?"

8 A. "Afghanistan, very, very old school, tribal place, mud  
9 huts, et cetera."

11:54 10 Q. "Yes. This what the brothers are saying."

11 A. "Many mujahideen live there."

12 Q. "They say it is anarchy."

13 A. "Yeah. The government has no control."

14 Q. "No government anywhere to be sighted?"

15 A. "Yeah."

16 Q. Now, that text -- or that chat referred to "Ma'rib." Is  
17 that conversation consistent with what you saw in Ma'rib when  
18 you were there?

19 A. Not knowing anything about either of the speakers, I would  
11:54 20 say it's consistent of someone who goes to a place, Ma'rib, and  
21 doesn't particularly understand the dynamics that underlie  
22 what's happening there. They are describing what it is that  
23 they see: the mud huts and the mujahideen who fought in  
24 Afghanistan in the '80s.

25 Q. Fair to say Ma'rib is one of the areas where the

1 mujahideen who fought in Afghanistan returned to?

2 A. The mujahideen who fought in Afghanistan returned to all  
3 different places in Yemen. There were fighters from Abyan,  
4 from Sheba, from Sa'ada, from Sanaa. I've sat and talked with  
5 these people. You can find them all over the country.

6 Q. And Ma'rib is one of those places?

7 A. Ma'rib is a place in the country, yes.

8 MR. GROHARING: Exhibit 696, please.

9 Q. Is this another chat session?

11:55 10 A. I assume so.

11 Q. Was it on May 22, 2006?

12 A. Yes, that's what it says.

13 MR. GROHARING: Page 2, please.

14 Q. Again, if you could read the portions attributed to the  
15 person who's identified in Arabic.

16 "So brother tell me about Ma'rib."

17 A. "Heh. It's a wild land. Very tribal. Full of bandits."

18 Q. "Have you seen tribe infighting there?"

19 A. "And al Qa'ida."

11:56 20 Q. "You mean thieves with regards to bandits?"

21 A. "When I was there, there was no such fighting. Yes,  
22 thieves, also a lot of foreigners, Egyptians, from Jama'at  
23 al-Jihad, the Jihad group, who escaped Egypt in the '80s and  
24 came here. But they're all fugitives and underground."

25 MR. GROHARING: Okay. Next page, please.

1 Q. "Are they living there without any hindrance?"

2 A. "No, they are all being hunted by the government."

3 MR. GROHARING: You can take it down.

4 Q. Now, I want to talk about some of the mujahideen you  
5 talked about from Afghanistan.

6 A. Okay.

7 Q. Now, I believe you've written that as many as 4,000  
8 mujahideen from Afghanistan ended up in Yemen after that  
9 conflict was done, is that correct?

11:57 10 A. Yeah. This is often a common number of individuals that's  
11 discussed. But the ranges on these for different scholars who  
12 look at it ranges quite widely.

13 Q. So my question was: You've written that 4,000 mujahideen  
14 returned to Yemen after that conflict, is that correct?

15 A. Yeah. Generally, as an estimate, anywhere from the late  
16 1980s up through the 1990s, yeah.

17 Q. And these were mujahideen who fought with Osama bin Laden  
18 and those forces against the Soviets, is that correct?

19 A. Not necessarily. A lot of the fighters who went there  
11:58 20 weren't necessarily aligned with Osama bin Laden. They were  
21 going there to fight the Soviets, with the backing of countries  
22 like Yemen, the U.S., Saudi Arabia.

23 Q. They were on the same side of the conflict as Osama bin  
24 Laden?

25 A. And the U.S., for that matter.

1 Q. Now, many of these fighters weren't Yemenis. They were  
2 from all over the place who returned to Yemen, correct?

3 A. It's hard to put percentages. But Yemen has a reputation  
4 of, yes, many of the Egyptians, for instance, who couldn't go  
5 back to Egypt were welcome back to Yemen. So there were  
6 Yemenis as well as others.

7 Q. So, now, President Salih used these men to his benefit  
8 during the Civil War?

9 A. He used many of the fighters who had been in Afghanistan,  
11:58 10 yes, as he used tribes and everyone else he could to his  
11 benefit.

12 Q. And, now, a lot of these same individuals became  
13 integrated in the Yemeni Government as well? They had jobs in  
14 the Yemeni Government, became integrated into society in Yemen?

15 A. Well, let me -- can I ask a clarifying question?

16 Q. Please.

17 A. Are we talking about Yemenis, or are we talking about  
18 people with non-Yemeni citizenship?

19 Q. Both.

11:59 20 A. So non-Yemenis, no. They weren't integrated into the  
21 system. Many of the fighters who had been in Afghanistan, many  
22 of them came back -- I mean, fighting in Afghanistan is  
23 something that in the 1980s President Salih encouraged them to  
24 do. The United States encouraged them to do. Saudi Arabia  
25 encouraged them to do. So when they came back, they went off

1 and they did their duty and they returned. And many of them  
2 went back to their tribes, went back to their family. Some of  
3 them went on to get jobs in the Yemeni Government.

4 Q. Now, this will go a lot more quickly if, when I ask you a  
5 question, if you can focus on what I'm asking and limit your  
6 response to that. You know a lot of information about Yemen.  
7 I'm not going to dispute that. But a lot of this information  
8 is not responsive to the questions. So if you would, if you  
9 can, when I ask you a question, try to focus on what I'm asking  
10 and respond to the question. Would you do that?

11 A. Yeah. I'm trying my best. I'm sorry.

12 Q. I appreciate that.

13 Now, these individuals in many cases were also given land.  
14 They were rewarded for their participation, and then President  
15 Salih, who was supportive of their efforts, gave many of them  
16 land in Yemen to live on?

17 A. Many of the Yemenis? I don't think I would describe it as  
18 many of the Yemenis, no. Some prominent shaykhs who the  
19 president needed for domestic politics were given land.

12:00 20 Q. Okay. I want to talk a little bit more about al Qa'ida in  
21 Yemen. I believe you've indicated that there's a long history  
22 of al Qa'ida presence in Yemen, and it's waxed and a waned a  
23 little bit over the years. But for now, over a decade, there's  
24 been a significant presence in Yemen for al Qa'ida, correct?

25 A. Moving backwards from 2011 back a decade?



1 Q. Yes. And well beyond, I guess, 2001.

2 A. There was a significant period of time in which there was  
3 no organizational or infrastructural presence of al Qa'ida in  
4 the country.

5 Q. Okay. No organizational structure. You're not talking  
6 about no presence of al Qa'ida? You're talking about the  
7 structure or --

8 A. No. I'm talking about -- I guess I would differentiate  
9 between al Qa'ida, the organization, and people who might hold  
12:01 10 sympathetic views to al Qa'ida.

11 Q. And who are former members or associates of al Qa'ida?

12 A. Not necessarily.

13 Q. Okay. Now, Osama bin Laden has a tie to Yemen?

14 A. His father was from Hadramawt.

15 Q. He often talked about his connection to Yemen?

16 A. Yes. He talked about -- yes, his connection to Yemen,  
17 yes.

18 Q. Are you familiar with Osama bin Laden's bodyguards?

19 A. Some of them. Some of them I've spoken to, yes.

12:02 20 Q. What percentage of them came from Yemen?

21 A. That's really difficult to know. I would say a large  
22 percentage, but specific number, I couldn't give. And I would  
23 doubt anybody could.

24 Q. Do you know why he selected a large percentage of his  
25 bodyguards from men that were from Yemen?

1 A. I can't testify to Osama bin Laden's thinking, but I can  
2 -- I think there are a couple of different theories that have  
3 been proposed, yes, as to why they were.

4 Q. Okay. What are you aware that, as far as what he said, as  
5 to why he selected Yemenis for his bodyguards?

6 A. Well, there are a couple of reasons. So, one, is because  
7 he wanted to sort of balance off some of the Egyptians within  
8 the organization who had primary positions. And another is  
9 because he really felt that it was important to have people  
10 from the Arabian Peninsula, Yemen and Saudi Arabia, which is  
11 where many of his bodyguards came from.

12 Q. And, now, as far as percentages within al Qa'ida, there's  
13 a significant percentage of Yemeni members of al Qa'ida; is  
14 that fair to say?

15 A. What point of al Qa'ida are you talking about, I guess?  
16 Are you talking, like, 2001, or are you talking today in Yemen?

17 Q. Let's start with al Qa'ida 2001.

18 A. There was a significant portion of Yemenis. I wouldn't  
19 call them a majority within al Qa'ida, no.

12:03 20 Q. What percentage would you attach to that?

21 A. That's difficult. I want to be -- I mean, you know, I'm  
22 an expert on al Qa'ida in Yemen as opposed to al Qa'ida  
23 broadly, and I want to keep my testimony very limited. And so  
24 most of the time what I do is only talk about al Qa'ida within  
25 Yemen and the Yemenis who had experience there. So I can talk

1 briefly about that if you'd like.

2 Q. Okay. But you will agree with me that 2001, significant  
3 connection between al Qa'ida, al Qa'ida Central, as some call  
4 it --

5 A. Right.

6 Q. -- and Yemen, correct?

7 A. Yes. Osama bin Laden had sent people back to Yemen in the  
8 summer of 2001. There were -- yes, there was a connection.

9 Q. And I believe you testified that Osama bin Laden was very  
10 involved in setting up camps?

11 A. In the 1990s.

12 Q. In the 1990s.

13 A. Right, prior to going to Sudan, yes.

14 Q. Created an organizational structure in Yemen?

15 A. He financed it. Abu Ali al-Harithi, the individual who  
16 was killed in the drone strike, was the individual who set up  
17 most of the camps and who built most of the infrastructure.

18 Q. He was the leader of al Qa'ida in Yemen for a number of  
19 years, right?

12:04 20 A. Yes.

21 Q. And he led probably hundreds of other members of al  
22 Qa'ida, or at least associates of al Qa'ida, during that time  
23 frame?

24 A. He -- hundreds might be a bit strong. But he was someone  
25 who certainly helped direct the organization then, yes.

1 Q. And there were camps set up, training camps?

2 A. Again, I'm sorry. What period are we talking about?

3 Q. During the period, on direct, when you testified there  
4 were camps set up.

5 A. Yes, in the 1990s, yes, he set up camps.

6 Q. What type of training could you receive at these camps?

7 A. You could receive a wide variety of things. I mean, from  
8 weapons training -- so, for example, their first attack in Aden  
9 in 1992, they trained for it in a camp in Sa'ada where they had  
10 some instructors who gave them information in setting up the  
11 explosives.

12 Q. What would you estimate the number of trainees were that  
13 went through these camps over the years?

14 A. Over the years, if we're talking about from the 19 -- from  
15 1990 to about 2000, I would estimate it to be fairly low.  
16 Under 200, that would be my estimate.

17 Q. They receive instruction on bomb-making and --

18 A. It really depends on the camp that we're talking about  
19 here and the particular time because, you know, what happened  
12:06 20 in the Civil War is then they were fighting with the Yemeni  
21 Government as opposed to working on some of these things. And  
22 then after that there was a bit of falling out. That's why  
23 context, I guess, is so important.

24 Q. Have you been to these camps?

25 A. No. When I went, they weren't there.

1 Q. Have you seen photos of these camps?

2 A. I have, yes.

3 Q. Video images?

4 A. Video images from the 1990s, no.

5 Q. Okay. During this time, the bottom line was that al  
6 Qa'ida had the ability to train in Yemen?

7 A. Yes, in the 1990s, yeah.

8 Q. Now, after September 11th, the United States conducted air  
9 strikes in Afghanistan. I assume you're familiar with those?

12:07 10 A. Yes.

11 Q. Some of those air strikes targeted training camps?

12 A. Yes, they did.

13 Q. And that caused training camps in Afghanistan to be shut  
14 down by al Qa'ida?

15 A. To the best of my knowledge, but I'm not an expert on  
16 Afghanistan.

17 Q. You do have some passing familiarity with the United  
18 States and their conflict with al Qa'ida?

19 A. Yes.

12:07 20 Q. And you're familiar with the fact that United States  
21 targeted al Qa'ida training camps?

22 A. Yes. That's what's been reported in the media, yeah.

23 Q. You're familiar with the fact that al Qa'ida then shut  
24 down their training camps and stopped using them the way they  
25 used to?

1 A. I'm -- my understanding -- and, again, not an expert in  
2 Afghanistan -- but that those particular camps were shelled,  
3 and so they couldn't be shut down because they were kind of  
4 bombed to kindling.

5 Q. Okay. Or they got out of where they were so they wouldn't  
6 be bombed.

7 Are you aware there was some concern in Yemen that the  
8 United States would also target training camps in Yemen, al  
9 Qa'ida training camps?

12:08 10 A. Well, what happened in Yemen is, I think, a little bit  
11 different because no one there knew September 11th was coming.  
12 So it took them by surprise as far as, you know, they were as  
13 shocked as anyone else when the September 11th attacks took  
14 place.

15 Q. My question was related to the United States' response to  
16 those attacks.

17 A. At the time, I remember hearing discussions of the U.S.  
18 bombing Yemen as well as bombing Pakistan and Afghanistan.  
19 There was a lot of things being talked about.

12:08 20 Q. What I asked you is whether or not, in Yemen, there was a  
21 concern that the United States would not only target  
22 Afghanistan and Pakistan, but they would also target Yemen.

23 A. They would target Yemen, yeah. Sorry. That was slightly  
24 different, I think, than targeting the training camps in Yemen.  
25 There was a concern that they would target Yemen, yes,

1 absolutely I would agree with that.

2 Q. As well as training camps in Yemen?

3 A. I don't know. I'm not sure that -- I mean, the concern  
4 that I know of is the official U.S. Government concern. Sorry.  
5 The official Yemeni Government concern, which is about Yemeni  
6 territory being attacked. The al Qa'ida -- sorry. That's what  
7 I was trying to get out with what I explained about this coming  
8 as a shock to al Qa'ida. I mean, I was just -- I'm not trying  
9 to be difficult. I'm just trying to make that distinction  
10 because the Yemeni Government has a different mind-set than  
11 does al Qa'ida in Yemen.

12 Q. I imagine, at least to some degree, as far as the al  
13 Qa'ida members in Yemen that you just testified about on direct  
14 as well as cross, they were present?

15 A. Yes, they were.

16 Q. At that time, they were operating camps?

17 A. This is 2001?

18 Q. 2001 time frame.

19 A. After the USS Cole, there had been some significant --  
12:10 20 some significant arrests made by the Yemeni Government, and  
21 there had been a period of decline leading up to 2001. There  
22 was still al Qa'ida presence, but I'm not sure about the  
23 training camps. There's no evidence of the training camps  
24 being operated between the USS Cole and between September 11th.

25 Q. Fair to say that that's out of a concern that if you were

1 at a training camp you might be a target? There might be a  
2 missile strike to take out a training camp either --

3 A. I don't think it was the missile strike concern. I think  
4 it was the pressure of the Yemeni Government and the arrests.

5 Q. Or you might be arrested?

6 A. Yeah. After the USS Cole, yeah, there were a lot of  
7 Yemeni arrests.

8 Q. Exposing yourself in a place like a training camp might be  
9 a good way to get you arrested?

12:10 10 A. I think there are a number of good ways to get arrested in  
11 Yemen.

12 Q. I'm just asking you if that's one of them.

13 A. That could potentially be one.

14 Q. But al Qa'ida -- and you're an expert on al Qa'ida in  
15 Yemen -- still needed to train, right?

16 A. Not necessarily. So the evidence that we have from the  
17 attacks that took place, these are guys who are holed up in  
18 safe houses where they're trying to not make any waves.

19 For instance, what I was talking about earlier, when  
12:11 20 someone like Fawaz al-Rabi'i came back from Afghanistan, he  
21 brought with him a cell back in the summer of 2001 that had  
22 already done all their training in Afghanistan. So they just  
23 set up their cell, and then they tried to avoid attention in  
24 order to carry out their attacks.

25 Q. Those folks were already qualified to --



1 A. Right.

2 Q. -- make bombs, that kind of thing?

3 A. I mean, some of them knew from the attacks that they tried  
4 to take place they clearly weren't that qualified.

5 Q. They had training?

6 A. They had done some training, yes.

7 Q. Okay. You mentioned safe houses. What's the purpose of a  
8 safe house?

9 A. Well, what we know -- so I can talk about specific -- the  
12:12 10 specific examples if that would be helpful.

11 Q. What's your understanding of what a safe house is?

12 A. From the material that I've reviewed that al Qa'ida has  
13 put out, it's to avoid detection by the Yemeni Government.

14 Q. And safe houses aren't unique in Yemeni. They exist in  
15 other countries as well, right?

16 A. Presumably.

17 Q. Are you aware that sometimes training takes place in safe  
18 houses now?

19 A. I've seen no evidence of training that was taking place in  
12:12 20 the safe houses.

21 Q. In Yemen, or are you talking al Qa'ida?

22 A. I'm talking in Yemen where I'm trying to limit my  
23 testimony.

24 Q. So is it your position -- your testimony, then, that al  
25 Qa'ida ceased training altogether after the training camps were

1 closed?

2 A. I would say my position is this: that after September  
3 11th, the game changed for al Qa'ida. And in a place where  
4 they'd had a certain degree of mobility, they no longer had  
5 that mobility. So instead of worrying about training, they  
6 were forced to reorganize, restructure themselves on the run.  
7 So it's a very hairy organization, one that's worried about  
8 personal safety, and when they were able to carry out attacks,  
9 they're just one-off attacks.

12:13 10 Q. They hadn't given up, right?

11 A. No, they hadn't given up.

12 Q. Their activities were disrupted?

13 A. Yes, absolutely.

14 Q. Now, I want to talk about the USS Cole attack and the  
15 response in Yemen. Are you familiar with the investigation of  
16 the USS Cole?

17 A. Excuse me. I'm familiar -- yes. I've talked to the  
18 ambassador who was involved in the investigation. I've talked  
19 to other people. I didn't personally participate in it.

12:13 20 Q. As an expert on al Qa'ida in Yemen, this was an al Qa'ida  
21 attack, correct?

22 A. Yes, it was.

23 Q. So it certainly falls within your area of stated  
24 expertise, I would imagine?

25 A. Yes.

1 Q. That investigation -- I assume you're aware that the  
2 Yemenis had complaints about how the FBI conducted the  
3 investigation, correct?

4 A. Yeah, as did the U.S. ambassador.

5 Q. And who was that ambassador?

6 A. That was Ambassador Barbara Bodine.

7 Q. She's someone who you talked to during your time there?

8 A. My time in Yemen? No.

9 Q. Correct. Or perhaps afterwards?

12:14 10 A. Yes, I've met her since.

11 Q. And you talked to her about her experiences in Yemen, I  
12 imagine?

13 A. Yes.

14 Q. Fair to say she didn't see eye to eye with the FBI in  
15 Yemen?

16 A. I think that's fair to say, yes.

17 Q. Her interests and the FBI's weren't necessarily aligned at  
18 the time?

19 A. I mean, they both worked for and represented the U.S.

12:14 20 Government. So in that way, they were. But I don't think that  
21 both sides -- again, this is for someone outside -- both sides  
22 saw the best way to bring those larger goals to fruition.

23 Q. She was focused on trying to forge a relationship with  
24 President Salih and the country of Yemen?

25 A. I mean, I can't speak to her thinking, but --

1 Q. Part of her role as ambassador, that was what --

2 A. Yes. U.S.-Yemeni relations are, I think, at the top of  
3 the list for -- or U.S. and X country are at the top of the  
4 list for any U.S. ambassador in any country.

5 Q. The FBI was concerned with trying to figure out who killed  
6 17 Americans in Yemen, right?

7 A. I assume so, yes. That's why they were there for the  
8 investigation.

9 Q. The FBI came there with a large presence?

12:15 10 A. My understanding is. Larger, at least, than Ambassador  
11 Bodine, from the published works, felt was necessary.

12 Q. And Ambassador Bodine was very concerned about any  
13 acknowledgement that there was al Qa'ida in Yemen or large  
14 presence of al Qa'ida in Yemen, correct?

15 A. That's not my understanding of her position, no. But,  
16 again, I would hate to misrepresent her position since it's  
17 hers.

18 Q. So are you aware of her position or are you not aware of  
19 it?

12:16 20 A. I'm aware from conversations, but I wouldn't want to put  
21 words into anyone's mouth but my own.

22 Q. She's not here. So just do the best you can. If you can  
23 recall what her position was or what her actions were in this  
24 area since it is within your stated area of expertise, I'd  
25 appreciate if you'd try to answer it.

1 A. Right. My understanding of Ambassador Bodine's position  
2 at the time was that she wanted to carry out the investigation  
3 in a way that was not disruptive to U.S.-Yemeni relations.

4 Q. And part of that was a concern about the level of al  
5 Qa'ida presence and activity in Yemen that she had?

6 A. I don't think so. I think it was more that she was  
7 concerned that some of the FBI agents who were coming in didn't  
8 have a very good understanding of the environment in which they  
9 were operating. And so, I mean, this is what I was trying to  
10 get at earlier from how Yemen looks from the U.S. versus how it  
11 looks on the ground. And so she was someone who saw sort of  
12 the whole iceberg had been sort of under water looking at it.  
13 And the FBI agents, I believe she felt, were only looking at a  
14 small portion.

15 Q. The portion they were looking at was trying to conduct an  
16 investigation to figure out what happened, who was responsible,  
17 and an attempt to locate those individuals?

18 A. That's my understanding of their investigation, yeah, to  
19 solve the USS Cole attack and bring the perpetrators to  
12:17 20 justice, yes.

21 Q. Regarding the level of cooperation which you talked a  
22 little bit about before, are you aware that interview requests  
23 at that point -- the FBI had to pass requests for interviews of  
24 Yemeni citizens through Yemeni officials?

25 A. I'm aware that, for instance, President Salih went on Al

1 Jazeera and, you know, bragged about some of the  
2 noncooperation. So I don't know the exact details of all the  
3 interview requests, but I know that there were tensions between  
4 the President Salih and the FBI, yes.

5 Q. And so before you testified that after the Cole there was  
6 a period of cooperation, I believe you testified, from the  
7 Yemenis regarding efforts to track down al Qa'ida and such,  
8 right?

9 A. There were certainly, yeah. Fahd al-Qusa' was arrested.  
10 12:18 Abu Jendal Nasir al-Bahri was arrested, who, you know, later  
11 helped Ali Soufan and the FBI put -- link al Qa'ida to the  
12 September 11th attacks.

13 Q. Right. And at the same time, though, President Salih was  
14 -- it was a delicate balance for him?

15 A. I think, after the Cole, from the Cole to September 11th,  
16 yeah, there was balancing by President Salih, certainly.

17 Q. On one hand, he wanted to please the United States to  
18 continue to get aid and to make sure we weren't focused --

19 A. There was very little aid in 2000 because Yemen was still  
12:18 20 suffering from its position in 1990.

21 Q. Correct. And fair to say Yemen relies on the United  
22 States, as well as the United Nations, for a significant amount  
23 of aid?

24 A. No, I don't think that's fair to say. I think that Yemen  
25 relies a great deal on countries within the GCC, the Gulf

1 Cooperation Council, particularly Saudi Arabia, who puts much  
2 more money into the country than the United States. The United  
3 Emirates puts a great deal of money into the country, as does  
4 Qatar, Kuwait, and so on.

5 Q. Do I understand your testimony correctly that Yemen was  
6 not reliant on the United States and wasn't concerned about the  
7 United States' assistance as far as funding goes?

8 A. What I'm saying is that U.S. assistance pales in  
9 comparison to the assistance that Yemen gets from other actors.  
10 And so these actors that Yemen gets a lot of money for [sic]  
11 are more important than the U.S. from whom Yemen gets,  
12 relatively speaking, much less assistance.

13 Q. And the delicate balance is President Salih does want to  
14 please the U.S., but there are people in Yemen who aren't  
15 supportive of the United States? They don't want him to please  
16 the United States too much?

17 A. Yeah. I think it's a -- I would go along with it's a --  
18 if we're talking about the period from the Cole attack to  
19 September 2011, yeah, there was a lot of balancing going on,  
12:20 20 not just from outside pressure from President Salih but also  
21 from his own personal characteristics.

22 Q. Okay. Now, what happened to the Yemenis that were  
23 convicted of these attacks?

24 A. So, for instance, Jamal al-Badawi, who's someone who's  
25 been convicted of these attacks; as well as Fahd al-Qusa',

1 who's been convicted of the attacks; Jamal al-Badawi, I  
2 believe, was initially convicted to ten years. There had been  
3 a prison break where he escaped in early 2003. He was later  
4 rearrested. Then they had sentenced him to death. Then he  
5 escaped in 2006. They recaptured him once again. That was  
6 commuted. He was let go. And so to the best of my knowledge,  
7 there was a bit of a shell game that was going on. And I  
8 believe now Jamal al-Badawi is not in prison, but I would have  
9 to double-check.

12:21 10 Fahd al-Qusa', someone else --

11 Q. Let's focus on Badawi.

12 A. Okay.

13 Q. So now, notwithstanding his involvement in the attacks on  
14 the USS Cole, he's walking around a free man in Yemen?

15 A. To the best of my knowledge, he is, yes.

16 Q. Are you aware the United States has indicted him?

17 A. Yes.

18 Q. Are you aware that Yemen has not agreed to extradite Mr.  
19 Badawi to the United States?

12:21 20 A. I'm not aware that there's ever been an official  
21 government refusal, but I know that Yemen has not.

22 Q. You're aware the United States asked?

23 A. No, I was not aware that they officially asked. I was  
24 aware that -- I had heard from some diplomats that they sounded  
25 out, but I wasn't aware of them officially asking because the



1 Yemeni officials and the government that I had spoke to had  
2 said other things.

3 Q. Okay. Let's move to Fahd al-Qusa'. He was also involved  
4 in the Cole attack, correct?

5 A. Yes. He was someone who was, I believe, supposed to  
6 videotape the attack, or at least that's the story that's  
7 emerged since, yes.

8 Q. And what happened to him?

9 A. So he was arrested -- actually, I believe the FBI has  
10 interviewed him. Fahd al-Qusa' has spoken about this in  
11 interviews since. He was held for a few years and was then  
12 released.

13 Q. Are you familiar with the Ramadan Release Program in  
14 Yemen?

15 A. I don't believe it's referred to that, but I think what  
16 you're referring to is Hamoud al-Hitar's Program of Religious  
17 Dialogue.

18 Q. Please explain that for the jury.

19 A. Sure. This was a program that started in late 2002 when  
12:23 20 Yemen had, as I testified to earlier, conducted a number of  
21 arrests. And the problem with sort of throwing this massive  
22 sort of net out and bringing everybody back is sort of the same  
23 problem that the U.S. has had with Guantanamo Bay, that it  
24 doesn't really know who it has. So some of the guys might be  
25 guilty and some might not.

1           So Yemen instituted a program. It's often referred to as  
2     the Religious Dialogue Council in which a judge -- in this case  
3     Hamoud al-Hitar and couple of other scholars -- sit down and  
4     talk with the individuals and attempt to adjust their views and  
5     show why al Qa'ida, for instance, isn't -- why what al Qa'ida  
6     says is not consistent with the Qur'an.

7           That program was eventually stopped, I believe, December  
8     10, 2005. But Saudi Arabia has used a similar program using  
9     the Yemeni model. That's sort of a broad overview of the  
12:24 10    program.

11    Q.    It's fair to say that lots of Yemenis then are released  
12    and do not serve -- or didn't serve prison sentences because of  
13    this program?

14    A.    It's fair to say 364 Yemenis were released through this  
15    program.

16    Q.    Okay. It sounds like you're quite familiar with the  
17    program?

18    A.    Yes. I've interviewed the judge a number of times as well  
19    as individuals who have been through the program.

12:24 20    Q.    Fahd al-Qusa', you're aware he was one of the people that  
21    was released?

22    A.    The Yemeni Government has never released the names of the  
23    individuals, and so I've only had confirmation from individuals  
24    I spoke with, and I've not spoken with Fahd al-Qusa'.

25    Q.    You're aware he's no longer in jail? He was --

1 A. I'm aware he was released, but my understanding is that he  
2 was released after the end of the program, when the program was  
3 no longer in existence. So I don't know the reasons Fahd  
4 al-Qusa' was released.

5 Q. Are you aware that he's under Indictment in the United  
6 States?

7 A. Yes, I am.

8 Q. Are you aware that the Yemeni Government did not extradite  
9 him to the United States despite a request from the United  
10 States?

11 A. I wasn't aware of the request.

12 Q. What's he doing now?

13 A. He is currently a commander in al Qa'ida in the Arabian  
14 Peninsula, who often gives interviews.

15 Q. So he's still in al Qa'ida?

16 A. He's an active member of al Qa'ida, yes.

17 Q. The Cole, you mentioned Harithi being in charge of al  
18 Qa'ida in Yemen. He didn't conduct the attack on the USS Cole,  
19 did he?

12:25 20 A. No. What we have is the --

21 Q. He didn't conduct the attack, right?

22 A. I believe he was involved in it, yes.

23 Q. He was involved in the attack?

24 A. This is what al Qa'ida documents suggest.

25 Q. These are people that were operating under the control of

1 the organization, his organization in Yemen?

2 A. Well, I mean, it's -- how I would classify -- can I -- can  
3 I sort of explain what I'm thinking?

4 Q. Please.

5 A. Okay. Thanks. So what I would -- what al Qa'ida did is  
6 they sort of had this what bin Laden called centralization of  
7 decision-making, decentralization of execution. And so one of  
8 the guys who sort of was thought of as the mastermind is

9 Nashiri, who was outside of Yemen. Then there is a team made  
10 up of Al-Badawi, al-Qusa', al-Harithi was involved, who were  
11 carrying out the orders. So they had sort of a broad  
12 directive, but it's up to the guys who were on the ground to  
13 carry out the attack.

14 Q. Okay. Same organization?

15 A. Al Qa'ida, yes.

16 Q. So I want to ask you about other al Qa'ida activity in  
17 Yemen, both before or after the Cole attacks.

18 A. Okay.

19 Q. Are you familiar with an attack on the Jibla Hospital?

12:26 20 A. Yeah. That wasn't an al Qa'ida attack.

21 Q. Who was the attacker?

22 A. This was a small cell that carried out the attack in  
23 Jibla, and they also assassinated a socialist politician in  
24 Sunnah, both on the last few days in December of 2002.

25 Q. Now, are you -- do you know who Ibrahim al-Thawr is?

1 A. Thawr?

2 Q. Thawr, T-h-a-w-a-r.

3 A. Yes. He was a suicide bomber, I believe, for al Qa'ida.

4 Q. Nebras, he's also referred to?

5 A. I'm sorry?

6 Q. He's also referred to as Nebras? Have you heard that?

7 A. I've heard Nebras. I'd have to go back. There's a number  
8 of kunyas that these individuals use.

9 Q. Now, Nebras was one of the suicide bombers in the Cole  
10 attack, right?  
12:27

11 A. To the best of my recollection, yeah.

12 Q. Are you aware that Kamel, who you just talked about in the  
13 Jibla attack, Abdul Razak --

14 A. Kamel.

15 Q. -- was friends with and associates with Nebras' brother?

16 A. I mean, there's -- I wasn't aware of that connection, but  
17 there's a lot of individuals who are linked by family within  
18 Yemen to different people.

19 Q. Now, what about -- are you aware that he's associated with  
12:28 20 Fawaz al-Rabi'l?

21 A. We're talking about Ibrahim al-Thawr, right?

22 Q. No.

23 A. Who are we talking about?

24 Q. We're talking about Abdul Razak Kamel.

25 A. Linked in which way?

1 Q. That he was associated with Fawaz al-Rabi'l. Do you know  
2 who that is?

3 A. Yes, I do. Fawaz -- yeah. I'm aware that there are  
4 allegations. I haven't seen anything that would convince me  
5 that they were, you know -- because -- I mean, the time line  
6 gets tricky because Fawaz al-Rabi'l is coming back to Yemen in  
7 the summer of 2001.

8 Q. Fair to say when you were studying in Yemen in 2003 and  
9 2004, you weren't participating in the investigation of the  
10 Jibla Hospital attack?

11 A. That's fair to say, yeah. I wasn't a part of that  
12 investigation.

13 Q. Did you ever talk to the FBI agents who conducted that  
14 investigation or the Yemeni officials who conducted that --

15 A. I talked to Yemeni officials, yeah, as well as Yemeni  
16 journalists, yeah.

17 Q. Have you talked to FBI officials who participated in that  
18 attack?

19 A. No.

12:29 20 Q. Have you reviewed the materials, including Mr. Kamel's  
21 statement that he made, regarding the attack?

22 A. I've looked at the statement that he made. Some of the  
23 statements that Lisa Wedeen has uncovered from previous years  
24 that were made by these individuals who carried out both the  
25 Jibla as well as the assassination of Jarallah Umar. But I

1 haven't reviewed any of the FBI material, no.

2 Q. Are you familiar with the attack on the Limburg?

3 A. Yes, I am.

4 Q. When did that take place?

5 A. That took place in late 2002, October 2002, I believe.

6 Q. That was an al Qa'ida attack --

7 A. Yes, that was.

8 Q. -- you agree? October of 2002?

9 A. That's correct.

12:29 10 Q. Fourteen months after September 11, 2002?

11 A. Yes.

12 Q. Now, was Harithi, the head of al Qa'ida at the time, was  
13 he involved in that attack?

14 A. Yes, he was.

15 Q. What happened in that attack?

16 A. So what happened is that the individuals had been in a  
17 safe house in Al Mukalla, lying low. They were watching  
18 members of their network being rounded up around the country,  
19 many of them thrown in jail. They put a lot of pressure on  
12:30 20 al-Harithi as well as on al-Nashiri because Harithi wanted to  
21 bring him into the plot to carry out this attack. They were  
22 told over and over, Wait, wait, wait, wait, wait.

23 Finally, an individual named Yahya al-Mujali, who's a  
24 member of al Qa'ida, was killed in Sanaa in a Yemeni Government  
25 raid. Two of his brothers, Arif and Hameq Mujali, were

1 involved in this cell that eventually carried out the attack.  
2 And so after that, they really pressed to be able to carry it  
3 out and they were.

4 Q. They conducted the attack, right?

5 A. Yes, they did.

6 Q. Did you observe the trial?

7 A. No, I did not.

8 Q. Are you familiar with that investigation?

9 A. You mean the Yemeni investigation of that?

12:31 10 Q. Any investigation.

11 A. I'm familiar with the Yemeni side, yeah.

12 Q. But not the U.S. side?

13 A. I did not know that -- I mean, it was not -- it was a  
14 French-flagged oil tanker that was attacked. But in addition  
15 to sort of the U.S. being aware of it as an al Qa'ida attack,  
16 but I wasn't aware of any specific U.S. investigation into  
17 this, no.

18 Q. Or participation in the investigation?

19 A. I mean, I'd heard that the U.S. was participating but not  
12:31 20 in the lead role.

21 Q. Now, there were 15 al Qa'ida operatives prosecuted for --  
22 I'm going to talk about some other attacks as well -- for their  
23 role in that attack or a series of other attacks that happened  
24 in the same time frame?

25 A. There were several. I don't know the exact numbers. I



1 would have to go back and look at my notes.

2 Q. Who were the suicide bombers of the Limburg attack?

3 A. I don't recall their names offhand. I have it -- it's in  
4 my bag over there. I could look it up.

5 Q. Members of al Qa'ida?

6 A. Yes, they were.

7 Q. Now, there was another attack that -- or another attempted  
8 attack that focused on several embassies in Yemen. Are you  
9 familiar with that?

12:32 10 A. I'm familiar with some of the plots. You'd have to be  
11 more specific about what exactly you're referring to.

12 Q. Between March and May of 2002, members of al Qa'ida  
13 plotted against the American, British, Germany, Cuban, and  
14 French embassies in Yemen.

15 A. Yeah. What you're referring to is this -- it was three  
16 people. It was Fawaz al-Rabi'i, Yahya and Arif Mujali, all of  
17 whom I've mentioned earlier. They carried out a series of --  
18 they essentially placed bombs around different places in Sanaa  
19 and many of these bombs exploded. No one was killed. And at  
12:33 20 the end, they put out this statement saying, you know, What you  
21 need to do is you need to release 173 prisoners. And then they  
22 signed it, Sympathizers of al Qa'ida. And they gave a deadline  
23 of 30 days. They said, If this isn't done, then we're going to  
24 follow through on these threats. So instead of just the bombs  
25 exploding and no one being killed, then a number of people will

1 be killed. They were never able to follow through on those  
2 specific threats.

3 Q. They were members of al Qa'ida?

4 A. Yes. Fawaz al-Rabi'i and the two Mujali brothers, yes.

5 Q. They were part of Harithi's organization?

6 A. Yes.

7 Q. There was another plot that was targeting the American  
8 ambassador. Are you familiar with that plot?

9 A. Ambassador Hull you're referring to, Edmond Hull.

12:33 10 Q. Correct. August 9, 2002.

11 A. Yeah. I think there were a few plots that have come out.  
12 But, yeah, he writes about this in his memoirs that have just  
13 come out.

14 Q. So a few al Qa'ida plots were focusing on the United  
15 States ambassador to Yemen --

16 A. Yes.

17 Q. -- in 2002. And some of these individuals of the 15 we  
18 talked about before were prosecuted for their role in that  
19 plot?

12:34 20 A. Yes. I mean, they were prosecuted, yeah.

21 Q. This was a joint trial where all those offenses were  
22 prosecuted at the same time?

23 A. Sort of put in together, yeah, into a big porridge, which  
24 makes it a little difficult to sort of splice -- or parse out  
25 all of them out now.

1 Q. There were 15 defendants. All were accused of being  
2 members of al Qa'ida, and these were all al Qa'ida attacks, is  
3 that fair?

4 A. Well, I mean, many of the attacks or purported attacks  
5 didn't take place but there were plots, yeah.

6 Q. Plots. They were trying to attack --

7 A. Yes.

8 Q. -- people in Yemen.

9 One of those was the an attack on the Hunt -- a helicopter  
10 belonging to the Hunt Company. Are you familiar with that  
11 attack?

12 A. Yes, I am.

13 Q. That was in November of 2002?

14 A. 2002. It was the same day al-Harithi was killed.

15 Q. It's fair to say it wasn't al-Harithi that was attacking  
16 the Hunt helicopter?

17 A. Right. So what happened at the time was al-Harithi was  
18 out in Ma'rib having a meeting, and Fawaz al-Rabi'i and, I  
19 believe, five or six individuals were stationed outside the  
12:35 20 airport, and they eventually fired a manpad missile as well as  
21 some machine guns at the Hunt Oil helicopter.

22 Q. This was part of that same network, that same  
23 organization, al Qa'ida in Yemen, in the time frame, right?

24 A. Uh-huh.

25 Q. These were people that worked for Harithi but not Harithi

1 himself that actually conducted this attack?

2 A. He didn't conduct it, but he was aware of it.

3 Q. Part of his organization?

4 A. Yeah. But it's an organization on the run. So it's--  
5 there's communication -- it's the same sort of philosophy that  
6 we talked about earlier with bin Laden.

7 Q. They're trying to stay alive, but they're still trying to  
8 kill people.

9 There were also attacks -- plots against judicial  
10 officials and prosecutors in Yemen as well. Are you familiar  
11 --

12 A. There were threats made against them, yes, threats often  
13 that sort of as the defendant was being led away or something,  
14 he would yell out a threat.

15 Q. There were actually people prosecuted for these plots?

16 A. Yes. The Yemeni Government brought charges against them.

17 Q. I'm not referring to a random threat. I'm referring to a  
18 plot where people actually planned and conspired to attack  
19 members -- both judicial officials and prosecutors in Yemen?

12:36 20 A. I think there was -- if memory serves, there was one judge  
21 and two prosecutors who were targeted in these plots you're  
22 referring to, yeah.

23 Q. These are members of al Qa'ida in Yemen that were plotting  
24 to kill judicial officials and prosecutors in Yemen?

25 A. Well, that's a little tough. I don't think I'd go that

1 far because the problem that you have is, some of these people,  
2 like Fawaz al-Rabi'i and others, they have family members who  
3 aren't members of al Qa'ida. And so it becomes very difficult  
4 to sort of look back and say, Well, what is sort of a revenge  
5 plot, and what's a plot that's being directed by al Qa'ida?

6 Now, we know certain ones because al Qa'ida has talked  
7 about them. But it can be difficult to sort of look at all  
8 violence and say all of this is al Qa'ida and leave out the  
9 rest of Yemen. And Yemen is a very complicated country.

12:37 10 Q. Okay. For this plot, though, they were tried together  
11 with all the other plots that we just --

12 A. This was one of the charges brought up, yeah.

13 Q. Who took over for Harithi after he was killed?

14 A. So there was a meeting, and they were really two  
15 individuals who sort of came up. One was a guy that we've  
16 talked about a little bit earlier, Fawaz al-Rabi'i. Muhammed  
17 Hamdi al-Ahdal was another individual who sort of stepped into  
18 the role. But neither of them were really able to fill the  
19 shoes of al-Harithi, which is why his death was so detrimental  
12:38 20 to the organization.

21 Q. Other members of al Qa'ida had a meeting and --

22 A. I don't think there was one meeting. There was a series  
23 of discussions, yeah.

24 Q. Okay. Are you familiar with a term "Shura"?

25 A. Shura Council?

1 Q. Right.

2 A. Yeah.

3 Q. Is that commonly referred to as a meeting of senior  
4 members of al Qa'ida?

5 A. Yeah. I'm not sure if we can say that what happened in  
6 Yemen post al-Harithi was an actual Shura. We don't have an  
7 evidence from that, and that's a fairly technical term. The  
8 evidence we have indicates a series of looser conversations  
9 where they gravitated towards these two individuals to move on  
10 from al-Harithi's death.

12:38

11 Q. 2002, November, al-Harithi gets killed, and all the other  
12 members of al Qa'ida and their associates are figuring out what  
13 to do to survive; what's best for the organization, is that  
14 fair?

15 A. Yeah. I sort of look at it, if you're plotting it on a  
16 map, so you go from 2001, that's the game changer and al Qa'ida  
17 sort of decreases. It's on the run. It's trying to carry out  
18 attacks. Then al-Harithi's death in 2002 sort of breaks the  
19 back, and there's the sharp drop-off that we have.

12:39

20 Q. One of the individuals you mentioned was Hamdi al-Ahdal?

21 A. Ahdal, yes.

22 Q. He wasn't captured until a year later?

23 A. November of 2003, that's correct.

24 Q. So notwithstanding the sharp drop-off you just mentioned,  
25 a year later he was still on the run in Yemen?

1 A. A year later he was captured. So, yeah, what happened is  
2 -- I mean, it takes time, right? So they break the back of the  
3 organization. The organization can't really do anything. And  
4 they eventually round them up a year later.

5 Q. So they're still running around trying to do things  
6 presumably?

7 A. Well, al-Ahdal was at his wedding when he got arrested.  
8 He was in Sanaa.

9 Q. Members of al Qa'ida get married just like everyone else,  
10 right?  
12:40

11 A. Yeah, to the best of my knowledge.

12 Q. Based on your expertise, getting married doesn't stop  
13 someone from continuing their Jihadi --

14 A. Right. But the point is, is that he was in Ma'rib back in  
15 2001, and he had been harassed out of there until he got back  
16 to Sanaa where he tried to sort of blend in and that didn't  
17 work.

18 It was the same thing with Fawaz al-Rabi'i. They went out  
19 to Ma'rib trying to find refuge. They found that it was much  
12:40 20 different than what it had been, and so they were arrested as  
21 well.

22 Q. Okay. Now, on March 4, 2004 -- are you familiar with an  
23 individual named Abdul Rouf Nasib?

24 A. I've heard the name.

25 Q. What do you know about him?

1 A. I just -- I've heard the name. I'd have to have my memory  
2 refreshed. There's lot of Arabic names when you're studying al  
3 Qa'ida and Yemen.

4 Q. It's fair to say you haven't memorized the names of every  
5 member al Qa'ida in Yemen?

6 A. I think that's fair to say. I don't know all the names of  
7 members of al Qa'ida. I don't think anybody now, with the  
8 exception of Nasir al-Wihayshi or Qasim al-Raymi, knows now.

9 Q. Lots of folks there. You learned about some of them.

12:41 10 But, obviously, a lot of these individuals don't advertise  
11 their association with al Qa'ida, is that fair?

12 A. Yeah. I mean, I think it's fair to say there are members  
13 of al Qa'ida whose identity we don't know. I think that's  
14 fair, yes.

15 Q. Now, you mentioned -- I want to make sure I use the same  
16 term that you used. I believe you said al Qa'ida was  
17 eliminated in 2002 on direct.

18 A. I don't believe I said that. I said, I believe -- my  
19 recollection is, I said the organization was crumbling after  
12:42 20 the drone strike that killed al-Harithi. That was the thing  
21 that broke the organizational -- or the organization's back.

22 Q. If you misspoke and did say "eliminated" during direct,  
23 that's not accurate? That's not your opinion?

24 A. My opinion is that after the drone -- the drone strike in  
25 November 2002 was the strike that broke the back of al Qa'ida



1 in Yemen. After that, the organization which had been on the  
2 run previously, then was even that much more harried and  
3 harassed, to the point where al-Ahdal and al-Rabi'i were  
4 arrested within the year.

5 Q. They were trying to hold on --

6 A. They were trying, yes.

7 Q. Are you familiar with an arrest on February 16, 2005, in  
8 Sanaa where five al Qa'ida members were arrested?

9 A. I know that periodically there were -- I'm not familiar  
12:43 10 with the one that you're talking about. I'd have to have some  
11 more detail, some names.

12 Q. You were saying periodically there were --

13 A. Periodically -- yeah. So what happened, you know, between  
14 this time is that organizationally, yeah, most of the guys in  
15 Yemen who are more -- who would self-select as al Qa'ida, they  
16 were more drawn to the fighting in Iraq than they were to this  
17 dying Jihad at home. There's not really an infrastructural  
18 base for al Qa'ida in Yemen here.

19 So that doesn't mean that there aren't people who are  
12:43 20 sympathetic. We certainly know that there are some of these.  
21 But the organization as such, no, there were no infrastructure.  
22 The sort of infrastructure was restarted in February of 2006  
23 with that prison break.

24 Q. Well, there was a trial of 15 members of al Qa'ida that we  
25 talked about before. Fair to say that wasn't 100 percent of

1 the membership of al Qa'ida in Yemen at the time, right?

2 A. That's fair to say, yes.

3 Q. There were a great number of members of al Qa'ida over the  
4 years in Yemen? You --

5 A. Over the years, yeah.

6 Q. Lots of connections in Yemen to people in al Qa'ida?

7 A. "Lots" might be a little problematic as a term. There are  
8 certainly connections that -- you know, between certain Yemenis  
9 and al Qa'ida, yeah, absolutely. But, I mean, in the grand  
10 scheme of things, when we're talking about it, it's a pretty  
11 small percentage of the population. Yemen is a country of 25  
12 million. It's not like lots of the 25 million are affiliated  
13 with al Qa'ida.

14 Q. But, as you said, there were 4,000 --

15 A. This --

16 Q. -- veterans of the Afghan mujahideen, that fight, that  
17 came to Yemen?

18 A. Right, exactly. But the point is they're not al Qa'ida.  
19 They're not all al Qa'ida.

12:44 20 Q. Some of them are al Qa'ida. Some of them went out and did  
21 other things?

22 A. Right.

23 Q. Certainly, some of them maintained connections with Osama  
24 bin Laden. We've talked about some of them.

25 We haven't tracked down or the Yemeni Government or United

1 States or anyone else hasn't tracked down every member of al  
2 Qa'ida that went back there?

3 A. I don't believe so, no.

4 Q. Now, so it's fair to say that their presence was  
5 diminished then; their capabilities perhaps were diminished,  
6 but they were still an al Qa'ida presence in Yemen in 2003,  
7 2004 time frame?

8 A. No. So I would say that, again, from November 2002, the  
9 drone strike that sort of killed the leader, then, if you  
10 12:45 imagine like an infrastructure like a physical structure, that  
11 structure is crumbling. And then by November 2003, that  
12 structure has sort of ceased to be. And then in February of  
13 2006, they resurrect that structure back up after the prison  
14 break. That's how I analyze the situation.

15 Q. We'll get to the prison break in a little bit.

16 Are you familiar with someone named Hadi Yukum?

17 A. Yes. I've read the name, yes.

18 Q. Who's that?

19 A. This is an individual that President Salih has referred to  
12:46 20 as someone -- I'm paraphrasing -- but that the Saudis are crazy  
21 about arresting.

22 Q. Why are they crazy about arresting him?

23 A. My recollection is that the Saudis thought he was al  
24 Qa'ida, and President Salih claimed he was a gun salesman, gun  
25 merchant.

1 Q. Are you aware that some consider him as a leader in al  
2 Qa'ida in Yemen?

3 A. Some being? Some in the Yemeni Government, some in the  
4 Saudi Government, some in the U.S. Government?

5 Q. Well, any of the above, I suppose.

6 A. No. I guess I don't look at a lot -- you know, I have  
7 what's available to people through WikiLeaks or stuff, but I  
8 look at a lot of what al Qa'ida puts out. And there's no  
9 evidence in the material I've reviewed from al Qa'ida that  
10 people were viewing him -- people within al Qa'ida were viewing  
11 him as a leader.

12 Q. Now, in addition to actual members of al Qa'ida,  
13 associates of al Qa'ida, there are also a number of supporters  
14 of al Qa'ida and extremists in Yemen, is that fair to say?

15 A. Again, a number is, you know, a difficult term. As  
16 academics we like to try to be as precise as possible. There  
17 were certainly, I think, supporters, or people who would give  
18 aid. The problem is that many of these people aren't  
19 self-identifying as al Qa'ida, so they wear -- just like we do  
20 here, they wear multiple identities. They might be appealing  
21 as a tribesman or they might be appealing as, you know, a  
22 member of this extended family. And it's often difficult, not  
23 being present at those conversations, to know did this person  
24 think they were giving help to someone who was a member of a  
25 tribe, or did they think they were giving help to someone who's

1 a member of al Qa'ida?

2 Q. So you wouldn't -- if you were trying to find somebody  
3 who's a member of al Qa'ida, like when you were doing your  
4 interviews, you wouldn't go around just asking if anyone knows  
5 anyone from al Qa'ida, right?

6 A. No. That would not be a very good idea, I don't think.

7 Q. You'd have to have some kind of a connection, right, if  
8 you wanted to actually link up with someone who was al Qa'ida?

9 A. Well, I never interviewed anyone who was in al Qa'ida at  
10 the moment. Not active members. I talked to people who had  
11 been, say, released through this prison program who had been  
12 former members, things of that nature. Obviously, I didn't  
13 want to get in trouble with the U.S. or anyone for, you know,  
14 doing anything like that, so I didn't.

15 Q. But I believe, as you've testified, it's fair to say there  
16 were a number of these al Qa'ida and al Qa'ida sympathizers  
17 around. Some were on the run and some weren't very open about  
18 what they were doing. Is that fair?

19 A. I'm sorry. You'll have to repeat that.

12:49 20 Q. There were a number of these types of individuals around,  
21 in Yemen, present, either members of al Qa'ida, associates of  
22 al Qa'ida, or supporters of al Qa'ida, who basically from 2002,  
23 the killing of al-Harithi until now, there was a presence of  
24 these types of folks in Yemen?

25 A. Yeah. Well, it's something where, you know, people who

1 are sympathetic to many of the goals that al Qa'ida's had, you  
2 know, in 2004, 2005, these guys are headed off to Iraq. I  
3 mean, do people like this exist in Yemen? Yeah, I would say  
4 so.

5 Q. So some members of al Qa'ida, associates of al Qa'ida,  
6 supporters, went to Iraq to fight once the United States  
7 invaded Iraq in 2003. That's fair?

8 A. And not just supporters of al Qa'ida. I mean, this is  
9 where we get into some of the other things where the presence  
10 of a non-Muslim military invasion in the Muslim world attracted  
11 a -- attracted people from Yemen who wouldn't fight at home.

12 Q. And significant numbers of fighters from Yemen left to go  
13 to Iraq?

14 A. Significant? I'm not sure what that -- you would have to  
15 be more specific.

16 Q. What would you estimate the number? Do you have an  
17 estimate?

18 A. I would estimate in the low hundreds, would be my  
19 estimate. Because the Government of Yemen really put a lot of  
20 restrictions on people. So if you were a Yemeni under the age  
21 of 35, you couldn't fly alone to Jordan or Syria because those  
22 are the frontline states where people go to get into Iraq. And  
23 so the Yemeni Government clamped down on that.

24 Q. And there was also a rise at the time in Saudi Arabia of  
25 attacks by al Qa'ida-related individuals to interests in Saudi

1 Arabia, is that correct?

2 A. Yeah. If at the time you're referring to, 2003 to 2006,  
3 yes, there was an active branch of al Qa'ida in Saudi Arabia.

4 Q. So some of the members and associates of al Qa'ida and  
5 their supporters went to Iraq, perhaps some went to Saudi  
6 Arabia?

7 A. There's no evidence of any going to Saudi Arabia.

8 Q. So your opinion is that none of the members --

9 A. No. I'm saying there's no evidence I've seen from the  
12:51 10 internal documents that we have, and from statements that al  
11 Qa'ida has put out, that people in Yemen who wanted to be  
12 members of al Qa'ida when there wasn't the infrastructure in  
13 Yemen went to Saudi Arabia to join up with al Qa'ida -- what  
14 was known as al Qa'ida in the Arabian Peninsula at that time in  
15 Saudi Arabia.

16 Q. Okay. Now, is it fair to say that in 2002, 2003, 2004,  
17 Yemen was a dangerous place for U.S. Government personnel?

18 A. I don't think that's fair to say. I was there as a  
19 Fulbright Fellow in Yemen in 2003-2004. And when Yemen became  
12:52 20 a dangerous place later, they closed the Fulbright program and  
21 they closed the Critical Language Program from the State  
22 Department. And so at that time the U.S. Government was -- I  
23 mean, there wasn't a freeze on funding for people like myself  
24 to go there.

25 Q. So you wouldn't describe it as dangerous for U.S.

1 Government personnel?

2 A. Well, I mean, I think you have to put this in context,  
3 right? So 2003-2004 is not like 2008-2009 because, you know,  
4 Fulbright's operating there, the government is comfortable with  
5 people like myself being in the country, traveling around the  
6 country. In 2008-2009 it's a much different situation. The  
7 embassy's attacked by a group of seven people at the end of  
8 2008. It's -- I mean, they're just different.

9 Q. You're familiar with State Department and the warnings  
10 they put out?  
12:53

11 A. Yes, I'm aware of those.

12 Q. Restrictions? Are you familiar with warnings they put out  
13 while you were there?

14 A. I would periodically get warnings that the State  
15 Department put out in Yemen.

16 Q. That's something that -- as a U.S. citizen -- the State  
17 Department lets U.S. citizens know of security alerts and  
18 concerns, and they get that message out to people that are in  
19 foreign countries?

12:53 20 A. I believe there's -- I don't think "hierarchy" is the  
21 right word, but there's levels of these warnings, is my  
22 understanding.

23 Q. When you were there from 2003 to 2004, are you familiar  
24 with warnings that were put out by the State Department?

25 A. There were -- I'm familiar that -- some I was given. But,



1 again, this is something where I was free to travel around the  
2 country; it wasn't restricted in anyway. And they weren't  
3 closing down the Fulbright program like they did later. So, I  
4 mean, this is the sort of levels that I'm talking about.

5 Q. Okay.

6 MR. GROHARING: May I approach, your Honor?

7 THE COURT: All right.

8 Q. You recognize that document?

9 A. No, not right offhand, I don't.

12:54 10 Q. Do you recognize what type of document it is?

11 A. I mean, it appears to be a printed email.

12 Q. Are you looking at a document with an "800" on the bottom  
13 right corner?

14 A. Yes.

15 Q. Do you think -- that appears to be an email?

16 A. Doesn't -- that at the top -- it says "Wayback Machine"?  
17 All right. Sorry. It looked like how my emails print out when  
18 I print them out. I apologize.

19 Q. Well, are you familiar with what that document is?

12:55 20 A. It says a "travel warning" on the top.

21 Q. And who issues the travel warning?

22 A. The U.S. State Department.

23 Q. Okay. Is that something in your travels over the past  
24 decade or so you're familiar with?

25 A. Yes. I received them as a matter of course, whether in

1 the Peace Corps or in Yemen.

2 Q. And that travel warning was issued on May 23rd of 2003,  
3 correct?

4 A. That's what it says, yes.

5 Q. And it was issued by the State Department?

6 A. Yes.

7 Q. And in the warning, the State Department authorized return  
8 of nonemergency employees and adult family members of the U.S.  
9 Embassy in Yemen to leave immediately, is that correct?

12:56 10 A. Wait. It says, "Has authorized the return of nonemergency  
11 employees and adult family members of the U.S. Embassy  
12 effectively immediately." So my reading of that is that they  
13 were out and now they can come back? Is that an incorrect  
14 reading?

15 Q. Please read the next sentence.

16 A. Okay. "The security threats that" -- starting there?

17 Q. Yes.

18 A. Okay. "The security threats to all American citizens in  
19 Yemen remains high due to credible reports that terrorists have  
12:56 20 planned attacks against U.S." --

21 MR. CARNEY: May we approach, please?

22 THE COURT: Yes.

23 (SIDEBAR CONFERENCE AS FOLLOWS:

24 THE COURT: Is this the document you say you do not  
25 object to?

1 MR. CARNEY: Yes. But I intentionally gave Mr.  
2 Groharing leeway to ask about whether -- ask the witness about  
3 whether he was aware of this subject, and travel advisories, et  
4 cetera. But I'm asking to draw the line at actually reading  
5 this document because it's --

6 THE COURT: Does somebody have it?

7 MR. CARNEY: -- not something -- it's obviously not  
8 something he's ever read. It's just a hearsay document, so --

9 THE COURT: Okay.

12:57 10 MR. CARNEY: I gave him, you know, I thought a little  
11 leeway --

12 THE COURT: So --

13 MR. CARNEY: -- but reading the document.

14 THE COURT: -- the objection is hearsay?

15 MR. CARNEY: Yes, your Honor.

16 MR. GROHARING: The warning itself is not being  
17 offered for the truth of the matter asserted. To the extent  
18 that there's substance within the warning, it's his area of  
19 expertise. I want to ask him what effect that has on his  
12:58 20 opinion of Yemen. There are a number of these. The next one  
21 I'm going to show him specifically mentions al Qa'ida activity  
22 in Yemen right during the time frame he's talking about.

23 MR. CARNEY: Since he's never seen this, it's only  
24 relevant if it is the truth.

25 THE COURT: Well, it could be an event, okay? A

1 notice could be an event. It does contain statements which are  
2 statements of fact; for example, the security threat to all  
3 American citizens in Yemen remains high. That in particular is  
4 a statement of fact. So I don't think the document can come  
5 in. Perhaps if he's able to -- he may be not able to -- say  
6 that there were a number of travel advisories concerned about  
7 safety or something like that.

8 MR. CARNEY: I don't have a problem with that.

9 MS. BASSIL: Obviously, the State Department didn't  
10 care about the Fulbright Scholars.

11 THE COURT: I'm not so sure of that.

12 But anyway, we're almost at 1:00, so maybe we'll take  
13 this opportunity to break. How much more do you have with him?

14 MR. GROHARING: Not an awful lot but enough not to  
15 press on.

16 THE COURT: Okay. We'll stay and deal with a couple  
17 of things when we send the jury out.

18 MR. CARNEY: If Mr. Groharing were to rest right now,  
19 I would have no redirect.

12:59 20 THE COURT: That's very encouraging.

21 MR. CARNEY: I just wanted to let you know.

22 THE COURT: Okay.

23 . . . END OF SIDEBAR CONFERENCE.)

24 THE COURT: Jurors, we've hit 1:00. We're going to  
25 stop now. Tomorrow morning I have a matter that I have to

1 attend to first thing in the morning, so we won't be able to  
2 start until 10:00 tomorrow morning. So you can adjust your  
3 travel schedule. We'll try to keep going efficiently tomorrow  
4 as well. But it will be a bit little later start so I can --  
5 basically, I'm attending a national meeting by remote that I  
6 have to be part of.

7 So enjoy the rest of today and we'll see you tomorrow.  
8 We'll stay briefly with the lawyers.

9 (The jury was excused at 1:00 p.m.)

01:01 10 THE COURT: We're not where we thought we would be.  
11 Let me just say this: Both sides have, on occasion, admonished  
12 witnesses to try to stay focused in their answers, and  
13 responsive. And I, bouncing off that, would encourage the  
14 examinations on both sides -- this is a general observation --  
15 to be focused to what is essential and get us back, because  
16 we've really slowed down here. Okay. That's just the thought  
17 for the day here.

18 MR. CARNEY: To be candid, well, when Mr. Groharing  
19 asked the witness to just answer the question, I almost stood  
01:02 20 up and said, I would join in that request, but I thought it  
21 would be --

22 THE COURT: Well, okay. This is an environment that  
23 lawyers are familiar with and people in other walks of life are  
24 not as familiar with and they may behave, understandably, the  
25 way they behave in their native environment. And so the

1 lawyers, I -- but it's not just controlling the witnesses.  
2 That's not just what I meant. I meant, there are points being  
3 made that are worth making but not bolded and underlined.  
4 Anyway -- okay.

5 MR. CARNEY: I do have a matter that I need to bring  
6 to the Court's attention. I'm going to be requesting an  
7 evidentiary hearing on a matter that has -- that I've been  
8 informed occurred during the testimony of Kareem Abuzahra.  
9 Your Honor recalls he was the final civilian witness called  
01:02 10 before Evan Kohlmann. He's the person who the government  
11 contends went to Yemen with the defendant and Abousamra but  
12 then got an email and returned to the United States. He was on  
13 the stand four days, with his testimony ending on December 1st.

14 I've been informed -- and I give credit to the  
15 government for giving me this information -- but I've been  
16 informed that when Abuzahra completed his first day of  
17 testimony, and from time to time after that, Abousamra [sic]  
18 received communications from people at the University of Lowell  
19 that led him to believe that his testimony, as reported in the  
01:03 20 media, had caused people at the university to view him as a  
21 potential security threat and that his job working for the  
22 University of Massachusetts at Lowell would be in jeopardy.

23 He called the FBI to get assistance in this regard,  
24 and wanted the FBI, I believe, to communicate to UMass.

25 THE COURT: Is that a 302 you're looking at?

1 MR. CARNEY: No. I'm looking at an email, your Honor.

2 THE COURT: Okay.

3 MR. CARNEY: I do not have a 302 on this.

4 I communicated this to several individuals at the FBI,  
5 including an FBI victim specialist, and the two case agents,  
6 Special Agent Heidi Williams and Task Officer Tom Daly. In  
7 addition, the United States Attorney's Office apparently, after  
8 this -- and I'm not positive of the date -- was contacted by  
9 Marty Meehan, chancellor of UMass Lowell. And I'm not privy to  
01:05 10 everything that was said in that conversation.

11 The reason I think an evidentiary hearing is necessary  
12 is to establish what Abousamra was --

13 THE COURT: Abuzahra.

14 MR. CARNEY: Abuzahra. I'm sorry.

15 -- what Abuzahra was told by people when he expressed  
16 his concern; for example, We'll contact UMass Lowell. We'll  
17 speak to people. We'll make sure you keep your job. We'll  
18 help you out. I don't know what was said. But the fact that  
19 this began on November 28th, on the first day of his testimony,  
01:05 20 and then I'm notified for the first time on December 6th, after  
21 he's completed his testimony, meant that this isn't a subject  
22 that I could inquire of him while he was on the stand.

23 THE COURT: I understand. As far as your  
24 information -- and maybe we'll hear more from somebody from the  
25 government -- but the word you used was "communications you

1 received." Were those oral? Were they emails? What were  
2 they? Were the mixed? Do you know?

3 MR. CARNEY: I don't mind --

4 THE COURT: Obviously --

5 MR. CARNEY: I don't mind handing you the email I  
6 received because --

7 THE COURT: No. No, the communications that Abuzahra  
8 got from people at Lowell -- UMass Lowell, were they oral?  
9 Were they emails? The point being, the emails might be  
01:06 10 available.

11 MR. CARNEY: I believe they were oral. And I'm not  
12 suggesting that either the United States Attorney's Office or  
13 the FBI did anything improper; in fact, I suspect people tried  
14 to bend over backwards. I certainly know -- and would expect  
15 Special Agent Williams and Task Force Officer Daly and everyone  
16 on this prosecution team to bend over backwards to do the  
17 appropriate thing in their eyes. What I'm concerned about is  
18 the message that would be conveyed to Abuzahra and how he would  
19 interpret that as a promise, reward and inducement --

01:07 20 THE COURT: I understand.

21 MR. CARNEY: -- that would affect his testimony while  
22 I was cross-examining him. And that's what I'm bringing to  
23 your attention.

24 THE COURT: Okay. What's the government's view?

25 MR. CHAKRAVARTY: And I sent that email to Mr. Carney.



1           The government recognized that potential argument by  
2     the defense, but it doesn't seem to me that an evidentiary  
3     hearing is the appropriate -- if any further follow-up is  
4     necessary, it seems to me that it's re-calling the witness so  
5     that he could then be asked about that. I hasten to add, the  
6     government doesn't necessarily believe that this is a  
7     disclosable event in the sense that a promise, reward or  
8     inducement was made.

9           THE COURT: Right. I understand.

01:07 10          Well, okay. Reacting to this, I do think some further  
11     exploration, so we know exactly what happened, is appropriate.  
12     Now, maybe it's a mix of the two suggestions. Maybe we make  
13     him available and permit a voir dire just to see whether  
14     there's anything worth putting in front of the jury.

15          MR. CHAKRAVARTY: Well, I mean, doesn't that --

16          THE COURT: Yes, it is the same thing. But, I mean,  
17     you could either ask him cold and nobody knows what he's going  
18     to say, or you could test it out and then see whether it's  
19     worth presenting to the jury.

01:08 20          MR. CHAKRAVARTY: The --

21          THE COURT: And, you know, I don't know how expansive  
22     an evidentiary hearing Mr. Carney has in mind, but it could  
23     have -- the term could encompass something beyond simply a voir  
24     dire of the witness.

25          MR. CHAKRAVARTY: I guess the government's concern is

1 the effect of doing the voir dire would essentially give  
2 Mr. Carney additional information as to whether he wants to  
3 re-call the witness for purposes of testimony at trial. The  
4 government doesn't see the need to do that in a bifurcated  
5 fashion because we feel like we have represented what, at  
6 least, our state of knowledge is about that. If we're wrong,  
7 then that will be exposed on --

8 THE COURT: Well, how about this, then? Instead of a  
9 voir dire, how about an opportunity for Mr. Carney to interview  
01:08 10 the witness?

11 MR. CARNEY: My focus is not so much on the witness  
12 because --

13 THE COURT: Well, it will be because it's what he  
14 appreciated was done for him rather than what was actually  
15 done. I mean, if somebody did him a favor and he didn't  
16 realize it, it wouldn't have the effect that you would want to  
17 show; on the other hand, if nobody did a favor and he thought  
18 they were --

19 MR. CHAKRAVARTY: Two points of clarification: He  
01:09 20 never asked for a favor and no favor was done for him.

21 THE COURT: I know. But my point simply is the gist  
22 of this whole thing is promise, rewards and inducements and so  
23 on and so forth, so what he understood them to be. And so an  
24 interview might answer that.

25 MR. CARNEY: The problem with that, your Honor, if I

1 may be so bold, I don't find Kareem Abuzahra to be a credible  
2 witness. I would find FBI Special Agent Heidi Williams to be a  
3 credible witness, Task Force Agent Tom Daly to be a credible  
4 witness. And I would prefer to rely on what they say the  
5 conversation was rather than on what Abuzahra says the  
6 conversation was.

7 MR. CHAKRAVARTY: And to that point, we made the  
8 disclosure of what they said happened. And I guess that's  
9 the -- to the extent that counsel needs further  
01:10 10 cross-examination, that's the witnesses. In terms of the facts  
11 of what happened, we feel we've adequately --

12 THE COURT: Is there a 302?

13 MR. CHAKRAVARTY: No, there's just this email which I  
14 sent yesterday.

15 THE COURT: And does the email say what the agents  
16 would say if they were asked?

17 MR. CHAKRAVARTY: Yes. It's one sentence,  
18 essentially, which Mr. Carney --

19 THE COURT: So it doesn't really.

01:10 20 MR. CHAKRAVARTY: Not as expansively as obviously it  
21 would be at an evidentiary hearing.

22 THE COURT: What about interviewing the agents on this  
23 point?

24 MR. CARNEY: That would be --

25 THE COURT: I'm just trying to do the easiest thing,

1 at first, anyway.

2 MR. CARNEY: That would be a useful first step. As I  
3 say, throughout the entire manner in which they've acted during  
4 this trial, I have no question that I will hear the straight --

5 THE COURT: Okay. Why don't you do that on this point  
6 and we'll see what happens.

7 Now, is that enough for now on that? We can follow up  
8 on it if --

9 MR. CARNEY: Well, I believe I may also have to speak  
01:11 10 to the person in the United States Attorney's Office who spoke  
11 to Chancellor Marty Meehan to know what was conveyed to  
12 Meehan -- I take that back. If those conversations only  
13 occurred after Abuzahra's testimony was complete, then --

14 THE COURT: They couldn't have affected it.

15 MR. CARNEY: -- they couldn't have affected it. So I  
16 don't see a need to do that.

17 THE COURT: Okay. So we'll -- to be continued.

18 MR. CARNEY: Yes, your Honor.

19 THE COURT: Now, speaking of FBI agents, the point  
01:11 20 that was raised earlier, it seems to me that there's no point  
21 in calling an FBI agent to give information that will not be  
22 what the defense is looking for, though it might be suggested  
23 that what was written in the -- in impeachment -- that what was  
24 written in the 302 was more accurate than what the testimony  
25 would be. But I don't think -- particularly on this very

1 collateral issue. So I think that if that was a motion to  
2 preclude that testimony, I would grant that motion.

3 I may note that the issue of any potential bias was  
4 brought up. The jurors get the picture whether it was formal  
5 evidence or not. To bring him back for something which doesn't  
6 sound like directly establishing the point anyway, it's  
7 actually the contrary, I don't think it's worth all the  
8 arrangements and disruptions that would have to be followed to  
9 do that.

01:12 10 MR. CARNEY: May I be heard on that, please, your  
11 Honor? I do view it as a more important piece of evidence than  
12 your Honor is suggesting it is because of this: When I tried  
13 to confront Abuzahra with inconsistent statements, he kept  
14 saying, I don't remember. For example, Aren't you the one who  
15 came up with the plot regarding the shopping mall? I don't  
16 remember. Aren't you the one who said that we should consider  
17 Hanscom Air Force Base? I don't remember. And so he kept  
18 dodging everything.

19 This is a rare instance where I asked him flat out,  
01:13 20 Didn't you tell the FBI that you know what prejudice is against  
21 Muslims because you, yourself, told the FBI that you're  
22 prejudiced against black people? No, I never said that.

23 I have a 302 which makes it explicitly clear that  
24 that's what he said. There can be no finagling with it, no  
25 uncertainty, no ambivalence. Kareem Abuzahra said exactly what

1 I reported to you and it's reflected in that report.

2 Even if an agent said, I don't remember what he told  
3 me, I believe I get that 302 into evidence by the rule of prior  
4 recorded testimony. It was a document made by the FBI agent on  
5 the date, or very close to the date, when the statement was  
6 made. He looked at it because he had to sign it. And he  
7 signed it because he knew at that time it was correct.

8 And so I can independently put in the 302 as prior  
9 recorded testimony even if the witness today says, I don't  
01:15 10 remember it. If he wants to --

11 THE COURT: Well, that's not what the representation  
12 was about what the witness would say. I'm not resolving the  
13 credibility question, but the testimony would be, I think, as  
14 Mr. Chakravarty said earlier, He didn't say that. We  
15 interpreted it, whatever, something like that. So it was a  
16 little bit more than not remembering; it was a different  
17 version.

18 At any rate, I understand the point. Two things:  
19 Rule 403, I think, is just too collateral, and it's a matter  
01:15 20 that the jurors have already heard something about; and, two, I  
21 doubt that the matter could get into the evidence in the way  
22 you suggest, so...

23 MR. CARNEY: It makes it look like I was coming up  
24 with something --

25 THE COURT: No, I think --

1 MR. CARNEY: -- to disparage the witness, you know, in  
2 an emotional, volatile, important way about credibility, and  
3 the witness denied it. So if I'm sitting here as if -- if I  
4 can just finish a second. If I'm sitting in the jury, are they  
5 thinking, Wow, what a low blow by Carney, asking the witness if  
6 he said he's prejudiced against blacks. Boy, that's low. And  
7 we heard directly from the witness that that's not true.

8 I want a special agent to get up and read what he  
9 wrote in his report that is unequivocal. I mean, there's no  
01:16 10 ambiguity whatsoever. And I believe --

11 THE COURT: Okay.

12 MR. CARNEY: -- that under prior recorded testimony I  
13 can get that report in against the United States.

14 THE COURT: That's a different point which we haven't  
15 argued yet. But at any rate, with respect to the testimony  
16 issue, the government's objection is sustained as to that. I  
17 mean -- just --

18 MR. CHAKRAVARTY: Your Honor, just, again, to  
19 hopefully preempt this other point of trying to offer this  
01:16 20 302 -- and it was a tactical risk that every trial attorney has  
21 when they want to impeach with a good-faith basis, that they're  
22 going to be able to either prove it up or choose to prove it up  
23 later.

24 In this case the witness, Mr. Abuzahra, specifically  
25 tried to explain his answer. He said, I didn't say it like

1 that, and if you'll allow me to explain, I will. And, again,  
2 as a tactical matter Mr. Carney chose not to allow him to  
3 explain and he's stuck with an answer -- with something, you  
4 know, where he shouldn't be allowed --

5 THE COURT: Okay. The record is what it is. And if  
6 you're arguing about this later, so be it. But anyway, for now  
7 the answer is no.

8 MR. CARNEY: So I cannot call that agent?

9 THE COURT: For that purpose. I don't know if there  
01:17 10 were other -- I mean, that was the only area of testimony that  
11 was suggested.

12 MR. CARNEY: Yes, your Honor. Can I offer his report  
13 as past recollection?

14 THE COURT: As I say, we haven't addressed that issue.  
15 I doubt that it is, but I'll consider that a little bit. I  
16 doubt it.

17 MR. CARNEY: I will need him to be here to acknowledge  
18 when he wrote this report, it was --

19 THE COURT: We heard what the proffer was. If you  
01:17 20 want to talk to him -- anyway, I doubt it.

21 MR. CHAKRAVARTY: And also, 302 is an amalgam of not  
22 only one individual's memory; it's a summary --

23 THE COURT: I don't think the nature of the document  
24 satisfies the prior recorded statement of the witness as  
25 opposed to the --



1 MR. CARNEY: Oh, no. It's a prior recorded statement  
2 of the agent.

3 THE COURT: Right.

4 MR. CARNEY: Not of the witness but of the agents.

5 THE COURT: No. No, I don't doubt there could be some  
6 impeachment of the agent if he were to testify. I've factored  
7 that in. It still is way too remote.

8 MR. CARNEY: May I ask the government if they spoke to  
9 the second agent whose name was on the report?

01:18 10 MR. CHAKRAVARTY: Yes. And there was a general  
11 agreement with regards to what transpired.

12 MR. CARNEY: You know, I've been a lawyer a long time,  
13 and when there's something as explicit as that in a 302, no  
14 special agent of the FBI would write in there that the witness  
15 I'm speaking to said the reason he knows prejudice against  
16 Muslims is because he, himself, is prejudiced against blacks.  
17 There's no way that the FBI would put that in a report of a  
18 cooperating witness if it wasn't the truth.

19 THE COURT: Okay.

01:19 20 MR. CARNEY: In fact, they'd have to agonize about it  
21 and say, Do we have to put it in here because it makes our guy  
22 look bad, and they chose to do so.

23 THE COURT: The issue is resolved. So we'll see you  
24 about 10:00 tomorrow.

25 THE CLERK: All rise for the court.

1 (Whereupon, at 1:18 p.m. the trial recessed.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 09-10017-GAO-1, United States of America v. Tarek Mehanna.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSE, RMR, CRR  
Official Court Reporter

/s/ Cheryl Dahlstrom  
CHERYL DAHLSTROM, RMR, CRR  
Official Court Reporter

Date: December 8, 2011